12 Am. Jur. 2d Bills and Notes XI A Refs.

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Bills and Notes

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XI. Liability of Parties

A. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 48.1, 54 to 59, 120, 193, 223 to 225, 231, 266, 272, 309, 444, 460

A.L.R. Library

A.L.R. Index, Accommodation Party or Paper
A.L.R. Index, Bills and Notes
A.L.R. Index, Checks and Drafts
A.L.R. Index, Uniform Commercial Code (UCC)
West's A.L.R. Digest, Bills and Notes 48.1, 54 to 59, 120, 193, 223 to 225, 231, 266, 272, 309, 444, 460

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XI. Liability of Parties

A. In General

§ 386. Liability of parties, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 48.1, 54 to 59, 223 to 225

Forms

Forms relating to liability of parties, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Legal Forms, Article 3 Negotiable Instruments; Uniform Commercial Code Pleading and Practice Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

A person is not liable on an instrument unless the person signed the instrument,[1] or the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person.[2] Where a third party does not sign a note, and the signatory does not sign in representative capacity of the third party, the third party is not liable on the note.[3] For example, a maker's spouse is not liable on promissory notes that the spouse never signed.[4] Similarly, a joint owner of a tract of land was not responsible for any of the debt owed on a promissory note that she did not sign, but that was signed only by the other joint owner, although both the joint owners signed a deed of trust on the tract of land securing the loan.[5]

Parol evidence is admissible to identify the signer, and when the signer is identified the signature is effective.[6]

This section is not intended to affect any other law requiring a signature by mark to be witnessed, or any signature to be otherwise authenticated, or requiring any form of proof.[7]

It is not necessary that the name of the obligor appear on the instrument, so long as there is a signature that binds the obligor. Signature includes an indorsement.[8]

Although no person is liable on an instrument unless the person's signature appears thereon, if a corporate officer signs a

note, the corporation may be liable on the underlying obligation.[9]

Caution:

The Uniform Commercial Code is inapplicable to electronic funds transfers ("wire transfers"). A wire transfer is not covered by Article 3 because it is not a signed negotiable instrument.[10]

Observation:

A "non-recourse loan" is one in which the maker does not personally guarantee repayment of the note and will, thus, have no personal liability.[11] If a maker of a nonrecourse note elects not to repay the note, the maker is not exposed to personal liability, but, instead, takes the risk that the collateral securing the note will be lost if the holder of the note decides to enforce its security interest in the collateral.[12]

A promissory note secured by a mortgage on certain property is not enforceable as a personal obligation as to a Chapter 11 debtor, where the debtor did not sign the note in the debtor's individual capacity, but only in the debtor's capacity as trustee of the trust that owned the property.[13]

The general rule of negotiable instruments is that the validity of a check is dependent on the genuineness of its signature, not the paper it is written on; therefore, a counterfeit check is equivalent to a forged check.[14]

Footnotes

1 U.C.C. § 3-401(a) [2002].

2 U.C.C. § 3-401(a) [2002], referring to U.C.C. § 3-402 [2002].
No person is liable on an instrument unless the person's signature appears thereon. Bank of Am., N.A. v. Calloway, 2016-Ohio-7959, 74 N.E.3d 843 (Ohio Ct. App. 8th Dist. Cuyahoga County 2016), appeal not allowed, 150 Ohio St. 3d 1452, 2017-Ohio-8136, 83 N.E.3d 938 (2017).
As to agents and representatives and their principals, see §§ 439 to 456.

3 ROSL, Inc. v. Des Jardins, 756 So. 2d 1078 (Fla. 4th DCA 2000).

4 Finance One of Houma, L.L.C. v. Barton, 769 So. 2d 739 (La. Ct. App. 1st Cir. 2000).

5 Dobbins v. Cunningham, 217 W. Va. 580, 618 S.E.2d 589, 59 U.C.C. Rep. Serv. 2d 538 (2005).

6 U.C.C. § 3-401 [2002] Official Comment 2.
As to the use of parol evidence to prove the representative capacity of the signer, see § 451.

7 U.C.C. § 3-401 [2002] Official Comment 2.

[8] U.C.C. § 3-401 [2002] Official Comment 1.
As to the liability of agents and representatives, see §§ 439 to 456.

[9] PWA Farms, Inc. v. North Platte State Bank, 220 Neb. 516, 371 N.W.2d 102, 41 U.C.C. Rep. Serv. 869, 69 A.L.R.4th 767 (1985).
As to corporate liability on a note signed by a representative, generally, see §§ 439 to 451.

[10] Shawmut Worcester County Bank v. First American Bank & Trust, 731 F. Supp. 57, 11 U.C.C. Rep. Serv. 2d 417 (D. Mass. 1990).

[11] Art Midwest Inc. v. Atlantic Limited Partnership XII, 742 F.3d 206 (5th Cir. 2014) (applying Texas law); Patton v. Porterfield, 411 S.W.3d 147 (Tex. App. Dallas 2013).

[12] Patton v. Porterfield, 411 S.W.3d 147 (Tex. App. Dallas 2013).

[13] In re Burm, 554 B.R. 5 (Bankr. D. Mass. 2016) (applying Massachusetts law).

[14] Morris James LLP v. Continental Cas. Co., 928 F. Supp. 2d 816 (D. Del. 2013).

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XI. Liability of Parties

A. In General

§ 387. Effect of reacquisition

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 193

Treatises and Practice Aids

As to reacquisition, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Forms

Forms relating to reacquisition or return of instrument, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [Westlaw®(r) Search Query]

Reacquisition of an instrument occurs if it is transferred to a former holder, by negotiation or otherwise. A former holder who reacquires the instrument may cancel indorsements made after the reacquirer first became a holder of the instrument. If the cancellation causes the instrument to be payable to the reacquirer or to bearer, the reacquirer may negotiate the instrument. An indorser whose indorsement is canceled is discharged, and the discharge is effective against any subsequent holder.[1]

Reacquisition refers to cases in which a former holder reacquires the instrument either by negotiation from the present holder or by a transfer other than negotiation. If the reacquisition is by negotiation, the former holder reacquires the status of holder. Although this section allows the holder to cancel all indorsement made after the holder first acquired holder status, cancellation is not necessary. The status of holder is unaffected by whether cancellation is made. However, if the

reacquisition is not the result of negotiation, the former holder can obtain holder status only by striking the former holder's indorsement and any subsequent indorsement. The latter case is an exception to the general rule that if an instrument is payable to an identified person, the indorsement of that person is necessary to allow a subsequent transferee to obtain the status of holder.[2]

The cancellation of the reacquirer's indorsement and of subsequent indorsements will ordinarily leave the instrument payable to the reacquirer or to bearer, depending upon whether the last indorsement makes the instrument payable to the reacquirer or bearer. If the instrument is payable to the reacquirer or bearer, it may then be renegotiated by the reacquirer.[3]

An indorser whose signature is not canceled by the reacquirer is not affected in any way by the reacquisition of the instrument by a former holder. In contrast, any subsequent holder whose indorsement is canceled is no longer liable for payment of the instrument. By the act of physically crossing out the indorsement, the indorser's liability for payment of the instrument is discharged. This discharge is effective not only as against the reacquirer but as against all other persons, including a person having the rights of a holder in due course.[4]

If a holder can cancel an indorsement after delivery and reacquisition it can cancel an endorsement before delivery, whatever the reason for the cancellation.[5]

Footnotes

1 U.C.C. § 3-207 [2002].

2 U.C.C. § 3-207 [2002] Official Comment.

3 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-207:5 [Rev.] (3d ed.).

4 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-207:6 [Rev.] (3d ed.).

5 Wells Fargo Bank, N.A. v. Sheikha, 221 So. 3d 657, 92 U.C.C. Rep. Serv. 2d 1032 (Fla. 4th DCA 2017).

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XI. Liability of Parties

A. In General

§ 388. Notice to third party

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 444, 460

A.L.R. Library

Personal liability of officers or directors of corporation on corporate checks issued against insufficient funds, 47 A.L.R.3d 1250

Treatises and Practice Aids

As to notice of right to defend action, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Forms

Forms relating to notice of litigation to third person, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Uniform Commercial Code Legal Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

In an action for breach of an obligation for which a third person is answerable over pursuant to Article 3[1] or the Bank

Deposits and Collections Law,[2] the defendant may give the third person notice of the litigation in a record, and the person notified may then give similar notice to any other person who is answerable over. If the notice states that the person notified may come in and defend and that failure to do so will bind the person notified in an action later brought by the person giving the notice as to any determination of fact common to the two litigations, the person notified is so bound unless after seasonable receipt of the notice the person notified does come in and defend.[3]

In many situations, a defendant, sued for breach of an obligation, may have a right to recover against a third person for breach of that particular obligation. Bringing the third person into the litigation eliminates the cost of relitigating the same facts in a separate lawsuit as well as the possibility of inconsistent results arising by the same factual question being resolved by different finders of fact. If the third person can be impleaded or joined in the action, the third person will be bound by the results of the action.[4]

Footnotes

1 U.C.C. §§ 3-101 et seq. [2002].

2 U.C.C. §§ 4-101 et seq. [2002].

3 U.C.C. § 3-119 [2002].

4 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-119:3 [Rev.] (3d ed.).

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XI. Liability of Parties

A. In General

§ 389. Admissibility of parol evidence

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 48.1

A promissory note is an unconditional contract of the maker to pay the holder according to the tenor of the instrument.[1] Because the note is an unconditional promise, the contract is complete as written, and parol evidence may not be used to impose conditions that are not apparent on the face of the instrument.[2] Thus, an oral agreement between the parties, made contemporaneously with the execution of the note or prior thereto, which relates to a condition not expressed in the note itself, is incompetent to change the contract as represented on the face of the note.[3]

Caution:

Parol evidence is admissible when it goes to the question whether the parties agreed that the instrument was to be enforceable.[4] The parol evidence rule does not apply to a situation where the instrument has been so framed as not to express the true agreement, where the parties, and, in some cases, extrinsic evidence relating to the discrepancies in such things as quantities, disparate values, and omissions of setoffs due are admissible to show a mutual mistake of fact in computing the principal amount of the note.[5] Similarly, the parol evidence rule does not prevent a defendant from asserting its defense of the failure to satisfy conditions precedent to the making of the loan.[6]

Footnotes

[1] Lewis v. Ikner, 349 Ga. App. 21, 825 S.E.2d 443 (2019).

[2] Simpson v. Milne, 677 P.2d 365, 36 U.C.C. Rep. Serv. 1262 (Colo. App. 1983); Grossman v. Banco Indus. de Venezuela, C.A., 534 So. 2d 773, 7 U.C.C. Rep. Serv. 2d 1527 (Fla. 3d DCA 1988); Mashburn Construction, L.P. v. CharterBank, 340 Ga. App. 580, 798 S.E.2d 251 (2017), cert. denied, (Aug. 14, 2017); Bank of Suffolk County v. Kite, 49 N.Y.2d 827, 427 N.Y.S.2d 782, 404 N.E.2d 1323, 28 U.C.C. Rep. Serv. 710 (1980).

[3] Whiteside v. Douglas County Bank, 145 Ga. App. 775, 245 S.E.2d 2, 24 U.C.C. Rep. Serv. 171 (1978).

[4] Simpson v. Milne, 677 P.2d 365, 36 U.C.C. Rep. Serv. 1262 (Colo. App. 1983) (holding that where one of two allegedly offsetting notes was in the hands of the plaintiff, its original payee, and the defendants claimed that the notes had been executed as a fiction to ease the mind of the plaintiff's dying wife, who "strongly felt" that a debt was owed her from a prior business transaction, the evidence went to the question of whether the parties intended the notes to show a legally enforceable debt and parol evidence was admissible).

[5] Brames v. Crates, 399 N.E.2d 437, 28 U.C.C. Rep. Serv. 419 (Ind. Ct. App. 1980).

[6] Key Bank of Southeastern New York, N.A. v. Strober Bros., Inc., 136 A.D.2d 604, 523 N.Y.S.2d 855, 6 U.C.C. Rep. Serv. 2d 1517 (2d Dep't 1988).

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XI. Liability of Parties

A. In General

§ 390. Joint, or joint and several, liability

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 48.1, 120, 223 to 225, 231, 272

A.L.R. Library

Renewal note signed by one comaker as discharge of nonsigning comakers, 43 A.L.R.3d 246

Treatises and Practice Aids

As to joint and several liability; contribution, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Forms

Forms relating to partners as makers on partnership note, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

Forms relating to joint and several liability, see Am. Jur. Legal Forms 2d, Bills and Notes [Westlaw®(r) Search Query]

Except as otherwise provided in the instrument, two or more persons who have the same liability on an instrument as makers,

drawers, acceptors, indorsers who indorse as joint payees, or anomalous indorsers are jointly and severally liable in the capacity in which they sign.[1]

As between comakers, they are presumed to be liable in equal amounts.[2] Comakers on a note are jointly and severally liable,[3] even if the instrument contains such words as "I promise to pay,"[4] unless the language of the note clearly indicates the contrary.[5]

If an instrument clearly specifies, liability of the parties can be exclusively joint or several. Neither "I promise to pay" nor "we promise to pay" is sufficiently clear to defeat imposition of joint and several liability. However, language such as, "we jointly promise to pay" or "we severally promise to pay" is sufficient.[6] Where an instrument is payable or indorsed jointly to two or more persons, the indorsement of each of the indorsees is necessary to negotiate the instrument. When both indorse the instrument, they incur joint and several liability.[7]

The common-law rule that a note evidencing a debt executed jointly by husband and wife rendered the husband liable on the note, but not the wife, no longer obtains.[8] When a husband and wife execute a note as comakers and then separate, they remain jointly and severally liable unless they mutually consent to a modification.[9] Thus, a wife's allegation that she never received any proceeds or benefit from a promissory note executed by her and her husband and that the proceeds were remitted to her husband did not afford her a means to escape liability for her obligations under the note because the note clearly indicated that the husband and wife were jointly and severally liable.[10]

Whether a promissory note was secured or unsecured is not material in fixing liability; where the obligation to pay the debt is personal, joint and several, it is the nature of the obligation which controls.[11]

Footnotes

1 U.C.C. § 3-116(a) [2002].

2 Caldwell v. Stevenson, 567 S.W.2d 278 (Tex. Civ. App. Austin 1978).

3 Hendrickson v. Carpenter, 88 Ark. App. 369, 199 S.W.3d 100 (2004); Jessup Farms v. Baldwin, 33 Cal. 3d 639, 190 Cal. Rptr. 355, 660 P.2d 813, 36 U.C.C. Rep. Serv. 230 (1983); Rosa v. Colonial Bank, 207 Conn. 483, 542 A.2d 1112, 7 U.C.C. Rep. Serv. 2d 490 (1988); Wehle v. Moroczko, 151 A.D.3d 1846, 57 N.Y.S.3d 322 (4th Dep't 2017); Ohio Student Loan Com'n v. Holley, 14 Ohio App. 3d 318, 471 N.E.2d 159 (8th Dist. Cuyahoga County 1984); Maurer v. Western Gulf Sav. & Loan Ass'n, 705 S.W.2d 736 (Tex. App. Houston 1st Dist. 1986); Rahall v. Tweel, 186 W. Va. 136, 411 S.E.2d 461, 16 U.C.C. Rep. Serv. 2d 1103 (1991).

4 Hubert v. Lawson, 146 Ga. App. 698, 247 S.E.2d 223 (1978).

5 Grimes v. Grimes, 47 N.C. App. 353, 267 S.E.2d 372, 29 U.C.C. Rep. Serv. 1332 (1980); Retamco, Inc. v. Dixilyn-Field Drilling Co., 693 S.W.2d 520 (Tex. App. Houston 14th Dist. 1985).

6 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-116:7 [Rev.] (3d ed.).

7 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-116:9 [Rev.] (3d ed.).

8 Grimes v. Grimes, 47 N.C. App. 353, 267 S.E.2d 372, 29 U.C.C. Rep. Serv. 1332 (1980).

9 Grand Island Production Credit Ass'n v. Humphrey, 223 Neb. 135, 388 N.W.2d 807, 2 U.C.C. Rep. Serv. 2d 193 (1986).

10 Dalo v. Thalmann, 878 A.2d 194, 60 U.C.C. Rep. Serv. 2d 1095 (R.I. 2005).

11 Tuttle v. Webb, 284 Va. 319, 731 S.E.2d 909 (2012).

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XI. Liability of Parties

A. In General

§ 391. Right to contribution

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 120, 266, 309

A.L.R. Library

Renewal note signed by one comaker as discharge of nonsigning comakers, 43 A.L.R.3d 246

Right of guarantor or surety, in order to avoid paying amount in excess of his proportionate share, to compel coguarantors or cosureties to pay their share to creditor, 38 A.L.R.3d 680

Forms

Forms relating to joint makers, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

Except as otherwise provided by statute or by agreement of the affected parties, a party having joint and several liability who pays the instrument is entitled to receive from any party having the same joint and several liability contribution in accordance with applicable law.[1] This provision is subject to the provision dealing with accommodation. If one of the parties with joint and several liability is an accommodation party and the other is the accommodated party, the statute dealing with accommodation applies.[2]

Because one of the joint and several obligors may have recourse against the other joint and several obligor, each party that is jointly and severally liable is a secondary obligor in part and a principal obligor in part. Accordingly, the provision dealing with discharge of secondary obligors determines the effect of a release, an extension of time, or a modification of the

obligation of one of the joint and several obligors, as well as the effect of an impairment of collateral as provided by one of those obligors.[3]

Indorsers normally do not have joint and several liability. Rather, an earlier indorser has liability to a later indorser. However, indorsers can have joint and several liability in two cases. If an instrument is payable to two payees jointly, both payees must indorse. The indorsement is a joint indorsement and the indorsers have joint and several liability and subsection (b) applies. The other case is that of two or more anomalous indorsers. An anomalous indorsement normally indicates that the indorser signed as an accommodation party. If more than one accommodation party indorses a note as an accommodation to the maker, the indorsers have joint and several liability and subsection (b) applies.[4]

If one comaker is required to pay the entire obligation, such comaker may seek contribution or reimbursement from such comaker's other comaker for one-half of the amount paid.[5] A comaker's right to contribution is unaffected by the marital relationship of the parties to the note.[6] However, if it can be shown that the parties have by agreement made a different allocation as to their liability, or one of the comakers has received a disproportionate benefit from the transaction, then disproportionate contribution may be allowed.[7]

Footnotes

1 U.C.C. § 3-116(b) [2002], referring to U.C.C. § 3-419(f) [2002].
Personal guarantors had no claim for contribution from their coguarantors, even though the bank obtained judgments to collect on the personal guaranties that rendered the guarantors liable for more than their pro rata share, where the guarantors had not yet satisfied the judgments. Emprise Bank v. Rumisek, 42 Kan. App. 2d 498, 215 P.3d 621 (2009).

2 Official Code Comment 1 to U.C.C. § 3-116 [2002], referring to U.C.C. § 3-419(f) [2002].
As to the liability of an accommodated party and an accommodation party to each other, see §§ 431, 432.

3 U.C.C. § 3-116 [2002], Official Code Comment 1, referring to U.C.C. §§ 3-103(a), 3-605 [2002].

4 U.C.C. § 3-116 [2002] Official Comment 2.

5 Dittberner v. Bell, 558 S.W.2d 527, 23 U.C.C. Rep. Serv. 369 (Tex. Civ. App. Amarillo 1977), writ refused n.r.e., (Apr. 5, 1978); Rahall v. Tweel, 186 W. Va. 136, 411 S.E.2d 461, 16 U.C.C. Rep. Serv. 2d 1103 (1991).
A vascular surgery center and its president were jointly and severally liable for obligations created by a promissory note and loan agreement they cosigned for a physician they jointly hired with a hospital, and, thus, the physician was entitled to contribution from the center and its president after he paid the note in full. Baptist Health v. Smith, 536 F.3d 869 (8th Cir. 2008).

6 Grimes v. Grimes, 47 N.C. App. 353, 267 S.E.2d 372, 29 U.C.C. Rep. Serv. 1332 (1980).

7 Rahall v. Tweel, 186 W. Va. 136, 411 S.E.2d 461, 16 U.C.C. Rep. Serv. 2d 1103 (1991).
Cosigners of a note who benefited from consideration from the note in proportions of 64% and 36%, respectively, were liable on the instrument in similar proportions. Dittberner v. Bell, 558 S.W.2d 527, 23 U.C.C. Rep. Serv. 369 (Tex. Civ. App. Amarillo 1977), writ refused n.r.e., (Apr. 5, 1978).

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XI. Liability of Parties

B. Particular Types of Parties

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 23 to 26, 48.1, 66 to 70, 74 to 83, 223 to 309, 394, 411.1 to 416, 420, 421

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XI. Liability of Parties

B. Particular Types of Parties

1. Maker

§ 392. Maker, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 48.1

Forms

Forms relating to actions against maker, generally, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

Forms relating to non-negotiable notes, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r) Search Query]

Forms relating to failure of maker, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [Westlaw®(r) Search Query]

A payee's remedy is against the "maker," that is, the party undertaking to pay, an issuer's obligation is to the instrument's holder, and an issuer of a cashier's check is also the maker of a note.[1] An "issuer" is a maker or drawer of an instrument.[2]

The issuer of a note or cashier's check or other draft drawn on the drawer is obliged to pay the instrument:

(1) according to its terms at the time it was issued or, if not issued, at the time it first came into possession of a holder;[3] or
(2) if the issuer signed an incomplete instrument, according to its terms when completed, to the extent provided.[4]
The obligation is owed to a person entitled to enforce the instrument or to an indorser who paid the instrument.[5]

Footnotes

[1] In re Lee, 179 B.R. 149, 26 U.C.C. Rep. Serv. 2d 386 (B.A.P. 9th Cir. 1995), decision aff'd, 108 F.3d 239, 31 U.C.C. Rep. Serv. 2d 1044 (9th Cir. 1997).
Payees were entitled to recover money owed on promissory note executed by the maker, where the note contained an unequivocal and unconditional obligation to repay, and the maker failed to pay in accordance with the note's terms. Kim v. Il Yeon Kwon, 144 A.D.3d 754, 41 N.Y.S.3d 68 (2d Dep't 2016).
The borrower was liable to the lender for failure to pay on a promissory note, where the borrower executed the promissory note, the note contained an unconditional promise to pay, and the borrower failed to make payments in accordance with the note. Prince v. Schacher, 125 A.D.3d 626, 2 N.Y.S.3d 585 (2d Dep't 2015).
Even if other obligors existed on a promissory note, that did not relieve the note maker of his obligations to pay under the terms of three notes executed by the maker, where all three notes contained a clause stating that the maker understood he was required to pay the note even if someone else had also agreed to pay it and that the note holder could sue the maker alone or anyone else who was obligated on the note. Wooden v. Synovus Bank, 325 Ga. App. 876, 756 S.E.2d 19 (2014).

[2] U.C.C. § 3-105(c) [2002].
An "issuer" is the maker or drawer of an instrument, which means the person who signs or is identified in a note or draft as a person undertaking to pay or ordering payment, respectively. In re Dudley, 502 B.R. 259 (Bankr. W.D. Va. 2013) (applying Massachusetts law).

[3] U.C.C. § 3-412(i) [2002].

[4] U.C.C. § 3-412(ii) [2002], referring to U.C.C. §§ 3-115, 3-407 [2002].

[5] U.C.C. § 3-412 [2002], referring to U.C.C. § 3-415 [2002].

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XI. Liability of Parties

B. Particular Types of Parties

1. Maker

§ 393. Issuer of cashier's check

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Bills and Notes 48.1

Section 3-412 applies to the issuer of a cashier's check or other draft drawn on the drawer.[1] Under other sections of the Uniform Commercial Code, a cashier's check or other draft drawn on the drawer is treated as a draft to reflect common commercial usage, but the liability of the drawer is stated by § 3-412 as being the same as that of the maker of a note rather than that of the drawer of a draft.[2]

A cashier's check is accepted by the act of issuance and becomes an irrevocable obligation of the issuing bank.[3] The bank's certification of a check constitutes acceptance and is the bank's signed engagement to pay the check on presentment when properly indorsed.[4]

The contracts of a maker of a note and the acceptor of a draft are identical in that each engages that they will pay the instrument according to its tenor at the time of their engagement or as completed.[5] Thus, whether a bank is considered to have accepted a cashier's check, as a draft, by the act of its issuance, or is considered to be the maker of a note, it is primarily obligated on the instrument.[6]

The bank's act of depositing a cashier's check into a third party's account without the necessary endorsement constitutes conversion.[7]

Footnotes

1 U.C.C. § 3-412 [2002] Official Comment 1.

2 U.C.C. § 3-412 [2002] Official Comment 1.

[3] Resolution Trust Corp. v. Gill, 960 F.2d 336, 17 U.C.C. Rep. Serv. 2d 541 (3d Cir. 1992); Matter of Kimball, 16 B.R. 201, 33 U.C.C. Rep. Serv. 627 (Bankr. M.D. Fla. 1981); Hospital of St. Raphael v. New Haven Sav. Bank, 205 Conn. 604, 534 A.2d 1189, 5 U.C.C. Rep. Serv. 2d 110 (1987); Dziurak v. Chase Manhattan Bank, N.A., 44 N.Y.2d 776, 406 N.Y.S.2d 30, 377 N.E.2d 474, 23 U.C.C. Rep. Serv. 958 (1978).

[4] Central Bank & Trust Co. v. First Northwest Bank, 332 F. Supp. 1166, 10 U.C.C. Rep. Serv. 442 (E.D. Mo. 1971), judgment aff'd, 458 F.2d 511 (8th Cir. 1972); Clinger v. Clinger, 503 P.2d 363, 11 U.C.C. Rep. Serv. 1026 (Colo. App. 1972).
By certification, a bank enters into an absolute undertaking to pay the check or draft when presented except where such certification is made by mistake; such mistake may be corrected so long as the rights of third persons have not intervened. Citibank Federal Savings Bank v. New Plan Realty Trust, 131 Md. App. 44, 748 A.2d 24, 41 U.C.C. Rep. Serv. 2d 1176 (2000).

[5] Banco Ganadero Y Agricola, S.A., Agua Prieta, Sonora, Mexico v. Society Nat. Bank of Cleveland, Ohio, 418 F. Supp. 520, 21 U.C.C. Rep. Serv. 233 (N.D. Ohio 1976).

[6] Banco Ganadero Y Agricola, S.A., Agua Prieta, Sonora, Mexico v. Society Nat. Bank of Cleveland, Ohio, 418 F. Supp. 520, 21 U.C.C. Rep. Serv. 233 (N.D. Ohio 1976); Tubin v. Rabin, 382 F. Supp. 193, 15 U.C.C. Rep. Serv. 1106 (N.D. Tex. 1974), opinion supplemented, 389 F. Supp. 787, 16 U.C.C. Rep. Serv. 1056 (N.D. Tex. 1974) and judgment aff'd, 533 F.2d 255, 19 U.C.C. Rep. Serv. 556 (5th Cir. 1976); Crosby v. Lewis, 523 So. 2d 1154, 5 U.C.C. Rep. Serv. 2d 1249 (Fla. 5th DCA 1988).
A cashier's check, purchased for adequate consideration, unlike an ordinary check, stands on its own foundation as an independent, unconditional, and primary obligation of the bank. Citibank Federal Savings Bank v. New Plan Realty Trust, 131 Md. App. 44, 748 A.2d 24, 41 U.C.C. Rep. Serv. 2d 1176 (2000).

[7] Jones v. Wells Fargo Bank, N.A., 666 F.3d 955, 76 U.C.C. Rep. Serv. 2d 529 (5th Cir. 2012) (applying Texas law).
As to conversion of instruments, generally, see §§ 484 to 493.

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XI. Liability of Parties

B. Particular Types of Parties

1. Maker

§ 394. Issuer of cashier's check—Defenses available

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 48.1

There is a split of authority on the issue of whether a bank should be permitted to raise any defense to its obligation to pay a cashier's check.[1] Some jurisdictions apply the rule that the nature and usage of cashier's checks in the commercial world is such that public policy does not favor a rule that would permit stopping payment on them.[2] In other jurisdictions, notwithstanding the public's perception of cashier's checks as being the equivalent of cash, acceptance of a cashier's check does not preclude a bank from refusing to pay it under certain circumstances.[3] Thus, it has been held that a bank may refuse to honor its cashier's check for failure of consideration when it is presented by a party to the instrument with whom the bank has dealt. In this limited situation the policy concerns which justify a rule against dishonor do not exist.[4]

Footnotes

1 Tokai Bank of California v. First Pacific Bank, 186 Cal. App. 3d 1664, 231 Cal. Rptr. 503, 2 U.C.C. Rep. Serv. 2d 983 (2d Dist. 1986).
Although the bank is the check's drawer it cannot "stop payment" as a technical matter, but the bank can still refuse to pay the check either for its own reasons or as an accommodation to its customer (the check's purchaser, who cannot "stop" the check's payment either). In re Lee, 179 B.R. 149, 26 U.C.C. Rep. Serv. 2d 386 (B.A.P. 9th Cir. 1995), decision aff'd, 108 F.3d 239, 31 U.C.C. Rep. Serv. 2d 1044 (9th Cir. 1997).

2 State ex rel. Chan Siew Lai v. Powell, 536 S.W.2d 14, 19 U.C.C. Rep. Serv. 626 (Mo. 1976).
A regulation which authorized a bank to recoup funds lost in connection with the release of uncollected funds by "charging back" or debiting its customer's account did not give the bank the legal authority to stop payment on wire transfers and cashier's checks which the bank issued. Parks v. Commerce Bank, N.A., 377 N.J. Super. 378, 872 A.2d 1116, 57 U.C.C. Rep. Serv. 2d 576 (App. Div. 2005).

[3] In re Lee, 179 B.R. 149, 26 U.C.C. Rep. Serv. 2d 386 (B.A.P. 9th Cir. 1995), decision aff'd, 108 F.3d 239, 31 U.C.C. Rep. Serv. 2d 1044 (9th Cir. 1997); Clinger v. Clinger, 503 P.2d 363, 11 U.C.C. Rep. Serv. 1026 (Colo. App. 1972); Quistgaard v. EAB European American Bank and Trust Co., 182 A.D.2d 510, 583 N.Y.S.2d 210, 18 U.C.C. Rep. Serv. 2d 242 (1st Dep't 1992).
As to stopping payment, see § 406.

[4] Travi Const. Corp. v. First Bristol County Nat. Bank, 10 Mass. App. Ct. 32, 405 N.E.2d 666, 29 U.C.C. Rep. Serv. 188 (1980).

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XI. Liability of Parties

B. Particular Types of Parties

1. Maker

§ 395. Primary liability of maker

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 48.1

Forms

Forms relating to non-negotiable notes, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r) Search Query]

The obligation of a maker, even an accommodation maker, is primary, absolute, and unconditional.[1] No presentment for payment is necessary in order to hold the maker liable.[2] However, when the maker of a note appears at the place payable to pay the note, but the note is not at such place and payment is not made, reasonable notice of the whereabouts of the note must be given the maker before the holder can declare a default.[3] A person is not bound by a promissory note executed by another merely because part of the consideration therefor flowed to the person.[4]

Observation:

An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and is obliged to pay the instrument in the capacity in which the accommodation party signs,[5] except that an accommodation maker has no right to contribution from an accommodated party.[6] While receipt of direct benefit is the dispositive consideration in determining whether a party qualifies as an "accommodation party," against whom an accommodated party can have no claim for contribution, some courts still consider the totality of the circumstances in assessing a party's accommodation status.[7]

Footnotes

[1] Hough v. State Bank of New Smyrna, 61 Fla. 290, 55 So. 462 (1911); Goldberg v. Albert, 161 Misc. 281, 291 N.Y.S. 855 (Mun. Ct. 1936).

[2] Weinstein v. Susskind, 162 So. 2d 683 (Fla. 3d DCA 1964).

[3] Schas v. Spencer, 98 Fla. 335, 123 So. 733 (1929).
The purported owner and holder of a promissory note conclusively demonstrated that it owned and held the note and was entitled to recover from the maker of note, although the purported owner failed to produce the original note and relied on a copy of the note, where the guarantor acknowledged that his signature was on the note, which he signed as president of the company that was the maker of the note, the custodian of the note and loan file testified that the copy produced was a true and correct copy of the original note, which was located in the purported owner's collateral department in Michigan, and the defendants admitted into evidence their own copy of the note, which confirmed that the purported owner was the present owner and holder of the note. Comerica Bank v. Progressive Trade Enterprises, Inc., 544 S.W.3d 459 (Tex. App. Houston 14th Dist. 2018).

[4] Southeastern Home Mortg. Co. v. Roll, 171 So. 2d 424 (Fla. 3d DCA 1965); Falk v. Salario, 108 Fla. 135, 146 So. 193 (1933).
A promissory note is nothing more than a written contract for the payment of money, subject to the fundamental rules governing contract law. In re Burm, 554 B.R. 5 (Bankr. D. Mass. 2016) (applying Massachusetts law); T. Butera Auburn, LLC v. Williams, 83 Mass. App. Ct. 496, 986 N.E.2d 404 (2013).

[5] § 422.

[6] U.C.C. § 3-419(f) [2002].

[7] In re Simpson, 474 B.R. 656, 78 U.C.C. Rep. Serv. 2d 48 (Bankr. S.D. Ind. 2012) (applying Indiana law).

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XI. Liability of Parties

B. Particular Types of Parties

2. Drawee or Acceptor

§ 396. Obligation of drawee

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 24 to 25, 66 to 70

A.L.R. Library

Recovery, on theory of quasi contract, unjust enrichment, or restitution, of money paid in reliance upon unenforceable promise to accept a bill of exchange or draft, 81 A.L.R.2d 587

Forms

Forms relating to acceptance of draft, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [Westlaw®(r) Search Query]

A check or other draft does not of itself operate as an assignment of funds in the hands of the drawee available for its payment, and the drawee is not liable on the instrument until the drawee accepts it.[1] Until the instrument is accepted, the payee or holder must look to the drawer for protection.[2]

Once the drawee accepts the draft, the drawee becomes primarily liable for its payment.[3] Conversely, a drawee bank that does not "accept" the checks has no legal obligation to honor them.[4]

As a general rule, a drawee bank is not liable on a check until it accepts the check in writing.[5] Thus, a drawee bank does not become contractually liable on the draft where it does not accept the draft in writing.[6] However, a bank is not liable to the drawer for paying on a check that contains no endorsement, where the proceeds of the check are paid to the payee of the check as intended by the drawer.[7]

Observation:

Liability with respect to drafts may arise under other law. For example, U.C.C. § 4-302 imposes liability on a payor bank for late return of an item.[8] Thus, a drawee who fails to accept an item may be liable in tort because of its representation that it has accepted or that it intends to accept the item.[9]

Caution:

The Uniform Commercial Code (UCC) provisions governing the obligation of a bank that accepts a check, and providing that a drawee is not liable on the instrument until the drawee accepts it, are not preempted by the federal statute providing that an insured out-of-state state bank can conduct any activity that is permissible under the laws of the host state for the host state's banks or national banks.[10]

Footnotes

1 U.C.C. § 3-408 [2002].

2 First Nat. Bank in Alamosa v. Ford Motor Credit Co., 748 F. Supp. 1464, 13 U.C.C. Rep. Serv. 2d 810 (D. Colo. 1990).

3 In re Becker, 423 B.R. 883 (Bankr. E.D. Mo. 2010) (applying Missouri law); General Motors Acceptance Corp. v. Abington Cas. Ins. Co., 413 Mass. 583, 602 N.E.2d 1085, 18 U.C.C. Rep. Serv. 2d 1151 (1992).

4 Happy Cattle Feeders, Inc. v. First Nat. Bank in Canyon, 618 S.W.2d 424, 34 U.C.C. Rep. Serv. 602 (Tex. Civ. App. Amarillo 1981), writ refused n.r.e.
A drawee bank is not liable to a holder in due course of stolen personal money orders since such personal money orders are the legal equivalent of unaccepted checks and are to be distinguished from traveler's and teller's checks. Adam Intern. Trading Ltd. v. Manufacturers Hanover Trust Co., 150 A.D.2d 294, 542 N.Y.S.2d 1, 9 U.C.C. Rep. Serv. 2d 1255 (1st Dep't 1989).

5 Galaxy Boat Mfg. Co. v. East End State Bank, 641 S.W.2d 584, 35 U.C.C. Rep. Serv. 180 (Tex. App. Houston 14th Dist. 1982).

6 First Nat. Bank of Commerce v. Anderson Ford-Lincoln-Mercury, Inc., 704 S.W.2d 83, 42 U.C.C. Rep. Serv. 1684 (Tex. App. Dallas 1985), writ refused n.r.e., (Nov. 27, 1985).

7 Bank One, Columbus, N.A. v. Hochstadt, 515 So. 2d 332, 5 U.C.C. Rep. Serv. 2d 1030 (Fla. 3d DCA 1987).

[8] U.C.C. § 3-408 [2002] Official Comment 2.

[9] First Nat. Bank of Commerce v. Anderson Ford-Lincoln-Mercury, Inc., 704 S.W.2d 83, 42 U.C.C. Rep. Serv. 1684 (Tex. App. Dallas 1985), writ refused n.r.e., (Nov. 27, 1985).

[10] Braham v. Branch Banking and Trust Co., 170 So. 3d 844, 87 U.C.C. Rep. Serv. 2d 18 (Fla. 5th DCA 2015), referring to 12 U.S.C.A. § 1831a(j)(2).

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XI. Liability of Parties

B. Particular Types of Parties

2. Drawee or Acceptor

§ 397. Obligation of drawee—Check or draft not assignment

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 25

Treatises and Practice Aids

As to check or draft not an assignment, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

A check or draft does not in itself operate as an assignment of any funds held by the drawee even though the funds are available for payment. A check or other draft is merely a revocable order by the drawer to the drawee.[1] The fact that the amount of the drawer's funds held by the drawee is equal to or greater than the amount of the check or draft does not alter this rule.[2] However, the fact that a check or draft is not in itself an assignment does not preclude the parties from making a separate agreement of assignment that is to be performed by the delivery of the check or draft to the agreed assignee.[3]

Footnotes

1 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-408:6 [Rev.] (3d ed.).

2 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-408:6 [Rev.] (3d ed.).

3 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-408:6 [Rev.] (3d ed.).

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XI. Liability of Parties

B. Particular Types of Parties

2. Drawee or Acceptor

§ 398. Obligation of acceptor

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 74 to 83

Forms

Forms relating to complaints against acceptor, bank, or drawer, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Pleading and Practice Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

The acceptor of a draft is obliged to pay the draft:
(1) according to its terms at the time it was accepted, even though the acceptance states that the draft is payable "as originally drawn" or equivalent terms;[1]

(2) if the acceptance varies the terms of the draft, according to the terms of the draft as varied;[2] or
(3) if the acceptance is of a draft that is an incomplete instrument, according to its terms as completed, as provided.[3]
The obligation is owed to a person entitled to enforce the draft or to the drawer or an indorser who paid the draft.[4]

Observation:

An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and is obliged to pay the instrument in the capacity in which the accommodation party signs.[5]

A cashier's check is accepted by the act of issuance and becomes an irrevocable obligation of the issuing bank.[6]

A depositary bank's duty when receiving a check naming itself as payee, when the depositary is not the drawer's creditor and so cannot apply the funds to its own benefit, is to follow the drawer's instructions.[7]

Footnotes

1 U.C.C. § 3-413(a)(i) [2002].

2 U.C.C. § 3-413(a)(ii) [2002].

3 U.C.C. § 3-413(a)(iii) [2002], referring to U.C.C. §§ 3-115, 3-407 [2002].

4 U.C.C. § 3-413(a) [2002], referring to U.C.C. §§ 3-414, 3-415 [2002].

5 § 422.
As to accommodation parties, generally, see §§ 420 to 438.

6 In re Essex Construction, LLC, 575 B.R. 648 (Bankr. D. Md. 2017) (applying Maryland law).

7 West Bend Mut. Ins. Co. v. Belmont State Corp., 712 F.3d 1030 (7th Cir. 2013) (applying Illinois law).

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XI. Liability of Parties

B. Particular Types of Parties

2. Drawee or Acceptor

§ 399. Obligation of acceptor—Amount of obligation

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 74 to 83

If the certification of a check or other acceptance of a draft states the amount certified or accepted, the obligation of the acceptor is that amount. If the certification or acceptance does not state an amount, the amount of the instrument is subsequently raised, and the instrument is then negotiated to a holder in due course, the obligation of the acceptor is the amount of the instrument at the time it was taken by the holder in due course.[1]

Comment:

This provision has primary importance with respect to certified checks. It protects the holder in due course of a certified check that was altered after certification and before negotiation to the holder in due course. A bank can avoid liability for the altered amount by stating on the check the amount the bank agrees to pay. The subsection applies to other accepted drafts as well.[2]

Footnotes

1 U.C.C. § 3-413(b) [2002].

2 U.C.C. § 3-413 [2002], Official Comment.

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XI. Liability of Parties

B. Particular Types of Parties

2. Drawee or Acceptor

§ 400. Admissions arising from acceptance

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Bills and Notes 77

Except for recovery of bank payments[1] and recovery for breach of warranty on presentment,[2] payment or acceptance of an instrument is final in favor of a person who took the instrument in good faith and for value or who in good faith changed position in reliance on the payment or acceptance.[3]

Footnotes

1 U.C.C. § 4-407 [2002].

2 U.C.C. § 3-417 [2002].

3 U.C.C. § 3-418(c) [2002].
The final payment rule barred the drawer's claim that the depository bank improperly permitted the drawer's employees to deposit purportedly forged checks in their personal accounts, where the bank understood the employees to be personally borrowing money in efforts to keep the drawer solvent, and believed that payments from the drawer to the employees were in repayment for those loans. Southland Health Services, Inc. v. Bank of Vernon, 887 F. Supp. 2d 1158 (N.D. Ala. 2012) (applying Alabama law).

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XI. Liability of Parties

B. Particular Types of Parties

3. Drawer

§ 401. Obligation of drawer, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 23, 26

Forms

Forms relating to complaints against drawer, generally, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

Forms relating to drawer, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Pleading and Practice Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

If an unaccepted draft is dishonored, the drawer is obliged to pay the draft:

(1) according to its terms at the time it was issued or, if it was not issued, at the time it first came into possession of a holder;[1] or
(2) if the drawer signed an incomplete instrument, according to its terms as completed.[2]

This obligation is owed to a person entitled to enforce the draft or to an indorser who paid the draft.[3]

Comment:

This provision states the obligation of the drawer on an unaccepted draft. It replaces former U.C.C. § 3-413(2). The requirement under former Article 3 of notice of dishonor or protest has been eliminated. Under revised Article 3, notice of dishonor is necessary only with respect to an indorser's liability. The liability of the drawer of an unaccepted draft is treated as a primary

liability. Under former § 3-102(1)(d), the term "secondary party" was used to refer to a drawer or indorser. The quoted term is not used in revised Article 3. The effect of a draft drawn without recourse is stated in U.C.C. § 3-414(e).[4]

This provision does not apply to cashier's checks or other drafts drawn on the drawer.[5] This provision excludes cashier's checks because the obligation of the issuer of a cashier's check is stated in another section.[6]

Footnotes

1 U.C.C. § 3-414(b)(i) [2002].

2 U.C.C. § 3-414(b)(ii) [2002], referring to U.C.C. §§ 3-115, 4-407 [2002].

3 U.C.C. § 3-414(b) [2002], referring to U.C.C. § 3-415 [2002].
A drawer possesses an obligation to pay a check according to its terms in the event the drawer's bank dishonors the check; the drawer owes this obligation to any person entitled to enforce the check, which includes the holder of the instrument. Romano's Carryout, Inc. v. P.F. Chang's China Bistro, Inc., 196 Ohio App. 3d 648, 2011-Ohio-4763, 964 N.E.2d 1102, 75 U.C.C. Rep. Serv. 2d 610 (10th Dist. Franklin County 2011).

4 U.C.C. § 3-414 [2002] Official Comment 2.

5 U.C.C. § 3-414(a) [2002].

6 U.C.C. § 3-414 [2002] Official Comment 1, referring to U.C.C. § 3-412 [2002].

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XI. Liability of Parties

B. Particular Types of Parties

3. Drawer

§ 402. Dishonor of accepted draft

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 23, 26

Treatises and Practice Aids

As to dishonor of accepted draft, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

If a draft is accepted by a bank, the drawer is discharged, regardless of when or by whom the acceptance was obtained.[1]

Comment:

This subsection changes former U.C.C. § 3-411(1), which provided that the drawer is discharged only if the holder obtains acceptance. Holders that have a bank obligation do not normally rely on the drawer to guarantee the bank's solvency. A holder can obtain protection against the insolvency of a bank acceptor by a specific guaranty of payment by the drawer or by obtaining an indorsement by the drawer.[2]

Once a draft is accepted or certified by a bank, the liability of the drawer on the draft is discharged. Consequently, the drawer

is not under any obligation to pay the draft if it is thereafter dishonored by nonpayment. This is so without regard to when or by whom the acceptance is obtained. The fact that it is obtained by the holder instead of by the drawer or that it is obtained after delivery rather than before issue is immaterial. The mere fact of acceptance by the bank discharges the drawer from any liability to pay the instrument. A person desiring to retain the liability of the drawer should obtain a separate guaranty of the draft or have the drawer also indorse the draft.[3]

Footnotes

1 U.C.C. § 3-414(c) [2002].

2 U.C.C. § 3-414 [2002] Official Comment 3, referring U.C.C. § 3-205(d) [2002].

3 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-414:6 [Rev.] (3d ed.).

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Bills and Notes
Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XI. Liability of Parties

B. Particular Types of Parties

3. Drawer

§ 403. Nonbank acceptor

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 23, 26

If a draft is accepted and the acceptor is not a bank, the obligation of the drawer to pay the draft if the draft is dishonored by the acceptor is the same as the obligation of an indorser.[1] This subsection states the liability of the drawer if a draft is accepted by a drawee other than a bank and the acceptor dishonors. The drawer of an unaccepted draft is the only party liable on the instrument. The drawee has no liability on the draft. When the draft is accepted, the obligations change. The drawee, as acceptor, becomes primarily liable and the drawer's liability is that of a person secondarily liable as a guarantor of payment. The drawer's liability is identical to that of an indorser, and this subsection states the drawer's liability that way. The drawer is liable to pay the person entitled to enforce the draft or any indorser that pays. The drawer in this case is discharged if notice of dishonor is required and is not properly given. A drawer that pays has a right of recourse against the acceptor.[2]

Footnotes

1 U.C.C. § 3-414(d) [2002], referring to U.C.C. § 3-415(a), (c) [2002].

2 U.C.C. § 3-414 [2002] Official Comment 4, referring to U.C.C. §§ 3-408, 3-413(a), 3-415, 3-503 [2002].

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§ 404. No recourse draft

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 23, 26

If a draft states that it is drawn "without recourse" or otherwise disclaims liability of the drawer to pay the draft, the drawer is not liable to pay the draft if the draft is not a check. A disclaimer of the liability is not effective if the draft is a check.[1] This subsection does not permit the drawer of a check to avoid liability by drawing the check without recourse. There is no legitimate purpose served by issuing a check on which nobody is liable. Drawing without recourse is effective to disclaim liability of the drawer if the draft is not a check.[2]

Comment:

Suppose, in a documentary sale, Seller draws a draft on Buyer for the price of goods shipped to Buyer. The draft is payable upon delivery to the drawee of an order bill of lading covering the goods. Seller delivers the draft with the bill of lading to Finance Company that is named as payee of the draft. If Seller draws without recourse, Finance Company takes the risk that Buyer will dishonor. If Buyer dishonors, Finance Company has no recourse against Seller but it can obtain reimbursement by selling the goods which it controls through the bill of lading.[3]

Footnotes

[1] U.C.C. § 3-414(e) [2002], referring to U.C.C. § 3-414(b) [2002].
As to the obligation of a drawer, generally, see § 401.

[2] U.C.C. § 3-414 [2002] Official Comment 5, referring to U.C.C. § 3-414(b) [2002].

[3] U.C.C. § 3-414 [2002] Official Comment 5.

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§ 405. Delay and suspension of drawee bank

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 23, 26

Treatises and Practice Aids

As to delay and suspension of drawee bank, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Forms

Forms relating to delay, generally, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Legal Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

A drawer's liability on a check may be discharged in full or in part if there is a presentment delay followed by a bank suspension which causes the drawer to lose funds that were available to pay the check.[1] If a check is not presented for payment or given to a depositary bank for collection within 30 days after its date, the drawee suspends payments after expiration of the 30-day period without paying the check, and, because of the suspension of payments, the drawer is deprived of funds maintained with the drawee to cover payment of the check, the drawer to the extent deprived of funds may discharge its obligation to pay the check by assigning to the person entitled to enforce the check the rights of the drawer against the

drawee with respect to the funds.[2] This provision is designed to protect the drawer of a check against loss resulting from suspension of payments by the drawee bank when the holder of the check delays collection of the check.[3]

Comment:

This provision retains the phrase "deprived of funds maintained with the drawee" appearing in former § 3-502(1)(b). The quoted phrase applies if the suspension of payments by the drawee prevents the drawer from receiving the benefit of funds which would have paid the check if the holder had been timely in initiating collection. Thus, any significant delay in obtaining full payment of the funds is a deprivation of funds. The drawer can discharge drawer's liability by assigning rights against the drawee with respect to the funds to the holder.[4]

Footnotes

1 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-414:10 [Rev.] (3d ed.).

2 U.C.C. § 3-414(f) [2002].

3 U.C.C. § 3-414 [2002] Official Comment 6.

4 U.C.C. § 3-414 [2002] Official Comment 6.

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§ 406. Stopping payment

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 23, 26

Law Reviews and Other Periodicals

Veltri, Cavanagh, Payments, 69 Bus. Law. 1181 (August 2014)

A customer, or any person authorized to draw on the account if there is more than one person, may stop payment of any item drawn on the customer's account or close the account by an order to the bank describing the item or account with reasonable certainty received at a time and in a manner that affords the bank a reasonable opportunity to act on it before any action by the bank with respect to the item. If the signature of more than one person is required to draw on an account, any of these persons may stop payment or close the account.[1] A stop-payment order is effective for six months, but it lapses after 14 calendar days if the original order was oral and not confirmed in a record within that period.[2] A stop-payment order may be renewed for additional six-month periods by a record given to the bank within a period during which the stop-payment order is effective.[3] The burden of establishing the fact and amount of loss resulting from the payment of an item contrary to a stop-payment order or order to close an account is on the customer. The loss from payment of an item contrary to a stop-payment order may include damages for dishonor of subsequent items.[4]

Caution:

A stop-payment order does not discharge the drawer's liability on the check.[5]

There is no right to stop payment on an accepted instrument such as a certified check.[6] In addition, a bank may not stop payment on bank money orders[7] or cashier's checks.[8] A cashier's check or teller's check purchased by a customer whose account is debited in payment for the check is not a check drawn on the customer's account within the meaning of the stop-payment statute.[9] A cashier's check is accepted by the mere act of issuance when it becomes the primary obligation of the bank, rather than the purchaser, to pay it from its own assets upon demand, and a purchaser has no authority to countermand a cashier's check because of fraud allegedly practiced on the purchaser by the payee.[10]

Because a personal check is simply an order to pay, a customer has the right to revoke the order before it is carried out. In comparison, a cashier's check is payable from the issuing bank's own account. Because the bank, as both drawer and drawee, is its own customer when it issues a cashier's check, the bank cannot be liable to itself for failing to stop payment on the check.[11]

Payment can be stopped against a holder in due course,[12] but the right to stop payment cannot be exercised so as to prejudice the rights of holders in due course without rendering the drawer liable on the instrument to such holders.[13] A holder in due course of an instrument upon which payment has been stopped has a right to recover from the drawer of the instrument.[14] The drawer remains liable to the holder in due course, and the drawee, if it pays, becomes subrogated to the rights of the holder in due course against the drawer.[15]

Footnotes

1 U.C.C. § 4-403(a) [2002].
A borrower's letter to a bank, instructing it to "freeze [his home equity] loan" "from further advances," satisfied requirements for stop-payment orders. Rusnack v. Cardinal Bank, N.A., 695 Fed. Appx. 704 (4th Cir. 2017) (applying Virginia law).
A bank had a right to pay a check with the notation "void after 90 days" more than 90 days after the check was issued, given that bank customer did not effectively stop payment on the check; under an account agreement between the bank and the customer, the bank specifically reserved the right to pay a stale check, and the effect of the "void after 90 days" notation was to render the check stale after the 90-day period. Aliaga Medical Center, S.C. v. Harris Bank N.A., 2014 IL App (1st) 133645, 387 Ill. Dec. 32, 21 N.E.3d 1203 (App. Ct. 1st Dist. 2014).

2 U.C.C. § 4-403(b) [2002].

3 U.C.C. § 4-403(b) [2002].

4 U.C.C. § 4-403(c) [2002].

5 Sawgrass Builders, Inc. v. Realty Co-op., Inc., 172 Ga. App. 324, 323 S.E.2d 243, 40 U.C.C. Rep. Serv. 159 (1984).

6 U.C.C. § 4-303(a)(1) [2002].

7 U.S. v. Second Nat. Bank of North Miami, 502 F.2d 535, 15 U.C.C. Rep. Serv. 870 (5th Cir. 1974).

8 State ex rel. Chan Siew Lai v. Powell, 536 S.W.2d 14, 19 U.C.C. Rep. Serv. 626 (Mo. 1976).

9 U.C.C. § 4-403 [2002] Official Comment 4 referring to U.C.C. § 4-403(a).

10 State ex rel. Chan Siew Lai v. Powell, 536 S.W.2d 14, 19 U.C.C. Rep. Serv. 626 (Mo. 1976).

11 Warren Finance, Inc. v. Barnett Bank of Jacksonville, N.A., 552 So. 2d 194, 9 U.C.C. Rep. Serv. 2d 1196 (Fla. 1989).

12 U.C.C. § 4-403 [2002] Official Comment 7.

13 Hebel v. Ebersole, 543 F.2d 14, 22 Fed. R. Serv. 2d 1122, 20 U.C.C. Rep. Serv. 965 (7th Cir. 1976); Citizens Nat. Bank of Englewood v. Fort Lee Sav. & Loan Ass'n, 89 N.J. Super. 43, 213 A.2d 315, 2 U.C.C. Rep. Serv. 1029 (Law Div. 1965); Bank of Fort Mill v. Rollins, 217 S.C. 464, 61 S.E.2d 41 (1950).

14 First of America Bank-Northeast Illinois, N.A. v. Bocian, 245 Ill. App. 3d 495, 185 Ill. Dec. 449, 614 N.E.2d 890, 23 U.C.C. Rep. Serv. 2d 122 (2d Dist. 1993).

15 U.C.C. § 4-403 [2002] Official Comment 7.
The bank was a holder in due course and had recourse against the defendant/drawer of the check despite the defendant's having stopped payment on the check, where the check was deposited in the customer's checking account, which became overdrawn when the bank honored other checks written by the customer against the account between the time of the deposit and the time it received notice of the stop-payment order and did not receive payment on the defendant's check. First of America Bank-Northeast Illinois, N.A. v. Bocian, 245 Ill. App. 3d 495, 185 Ill. Dec. 449, 614 N.E.2d 890, 23 U.C.C. Rep. Serv. 2d 122 (2d Dist. 1993).

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3. Drawer

§ 407. Death or incompetence of drawer

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 23, 26

With respect to bank deposits and collections, neither death nor incompetence of a customer revokes the authority of the drawee or payor bank to accept or pay the instrument until the bank knows of the fact of death or of an adjudication of incompetence and has a reasonable opportunity to act on it.[1] Even with knowledge, a bank may for 10 days after the date of death pay or certify checks drawn on or prior to that date unless an order to stop payment is made by a person claiming an interest in the account.[2]

Comment:

The reason for permitting a bank to pay checks within 10 days after the drawer's death is to avoid the filing of claims in probate, since such checks are normally given in immediate payment of an obligation and there is almost never any reason why they should not be paid.[3]

In the event of a bank customer's death, banks can satisfy their obligation to make bank account statements available by retaining statements at the bank, but the customer's burden to report unauthorized signatures does not arise, and the statute of repose is not triggered, until an estate representative is appointed.[4]

Footnotes

[1] U.C.C. § 4-405(a) [2002].

[2] U.C.C. § 4-405(b) [2002].

[3] U.C.C. § 4-405 [2002] Official Comment 2.

[4] Jefferson State Bank v. Lenk, 323 S.W.3d 146 (Tex. 2010), holding that even assuming that the bank reasonably relied on fraudulent letters appointing the administrator of the bank customer's estate, sending bank statements to the purported administrator of the customer's estate did not fulfill the bank's obligation to send account statements to the customer, since letters of administration did not make the administrator the bank customer.

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3. Drawer

§ 408. Liability to drawee or acceptor

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 23, 26

Forms

Forms relating to liability of drawer, see Am. Jur. Pleading and Practice Forms, Commercial Code [Westlaw®(r) Search Query]

The rule that the drawee who pays a draft or check is entitled to recover the amount of the payment on an implied contract of indemnity but has no action on the instrument itself, as its vitality is destroyed by the payment, is expressed in Article 4 of the Uniform Commercial Code with respect to bank deposits and collections by a provision providing that an item is properly payable if it is authorized by the customer and is in accordance with any agreement between the customer and the bank.[1]

Footnotes

[1] U.C.C. § 4-401(a) [2002].

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4. Indorser

§ 409. Obligation of indorser, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 48.1, 223 to 309

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Liability of indorser, other than payee or transferee, of nonnegotiable instrument, 18 A.L.R.3d 647

Guaranty of payment as covering principal debtor's liability as an indorser on third person's note or other negotiable instrument, 85 A.L.R.2d 1183

Personal liability of one who signs or indorses without qualification commercial paper of corporation, 82 A.L.R.2d 424

Forms

Forms relating to complaints against indorser, generally, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

Forms relating to indorser or endorser and indorsement or endorsement, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Legal Forms, Article 3 Negotiable Instruments; Uniform Commercial Code Pleading and Practice Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

Except as otherwise provided, if an instrument is dishonored, an indorser is obliged to pay the amount due on the instrument:

(1) according to the terms of the instrument at the time it was indorsed;[1] or
(2) if the indorser indorsed an incomplete instrument, according to its terms when completed.[2]
If a draft is accepted by a bank after an indorsement is made, the liability of the indorser is discharged.[3]

Comment:

This provision is similar in effect to § 3-414(c) if the draft is accepted by a bank after the indorsement is made. If a draft is accepted by a bank before the indorsement is made, the indorser incurs the obligation stated in subsection (a).[4]

Footnotes

1 U.C.C. § 3-415(a)(i) [2002].

2 U.C.C. § 3-415(a)(ii) [2002], referring to U.C.C. §§ 3-115, 3-407 [2002].

3 U.C.C. § 3-415(d) [2002], referring to U.C.C. § 3-415(a) [2002].

4 U.C.C. § 3-415 [2002] Official Comment 3.

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§ 410. Liability as dependent upon contract

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 223, 227, 267, 269

An unrestricted and unqualified indorsement on a negotiable instrument is a conditional contract by the indorser to pay the amount of the instrument to the holder in the event of the default of the primary obligor.[1] The indorser engages that on due presentment the instrument will be paid according to its tenor, and that if it is dishonored, and the necessary proceedings on dishonor are taken, the indorser will pay the amount thereof to the holder.[2] Thus, the transferor of an instrument who merely signs the transferor's name on the back assumes liability for repayment, on the maker's default, of the adjusted unpaid balance due on the instrument.[3]

Caution:

Where a note was made payable to a husband and wife, who later became separated, a separation agreement stated that the wife had "assigned" her interest in the note to her husband, and the wife also specially endorsed and delivered the note to her husband, and the makers later defaulted on the note because the note sued on did not refer to the separation agreement, such agreement was not admissible to show that the wife had signed the note in any capacity other than that of indorser, and the wife was liable on the note under the indorser's contract because she had failed to endorse the note "without recourse."[4]

Indorsers of negotiable certificates of deposit are subject to the same liabilities as indorsers of other negotiable instruments.[5] A corporation which indorses an instrument through an authorized agent is liable as an indorser.[6]

A bank was entitled to summary judgment in a cause of action seeking to impose indorser's liability on a commercial-checking-account customer with respect to checks indorsed by the customer and deposited in its account, which were subsequently dishonored by the payor banks, where (1) the customer's answer admitted indorsement of the checks, (2) timely dishonor of the checks was established by the bank's proof (copies of returned checks) that each check had been returned with the purported stamp of the payor bank which stated that acceptance or payment was refused for reasons consistent with dishonor, and (3) timely notice of dishonor by the bank to the customer was also established by the declaration of the bank officer responsible for the customer's account which stated that the president of the customer was personally advised of each check's dishonor within one day after the bank had learned of such dishonor.[7]

Footnotes

1 Bemis v. McKenzie, 13 Fla. 553, 1869 WL 1566 (1869); Nevada State Bank v. Fischer, 93 Nev. 317, 565 P.2d 332, 21 U.C.C. Rep. Serv. 1384 (1977).

2 Worley v. Johnson, 60 Fla. 294, 53 So. 543 (1910).

3 Val Zimmermann Corp. v. Leffingwell, 107 Wis. 2d 86, 318 N.W.2d 781 (1982).

4 Alves v. Baldaia, 14 Ohio App. 3d 187, 470 N.E.2d 459, 39 U.C.C. Rep. Serv. 1362 (6th Dist. Lucas County 1984).

5 Pardee v. Fish, 60 N.Y. 265, 1875 WL 10648 (1875).

6 East Coast Lumber & Supply Co. v. Maxwell, 77 Fla. 62, 80 So. 741 (1919).
As to the liability of corporations for indorsements by agents, generally, see §§ 448, 449.

7 Security Pac. Nat. Bank v. Associated Motor Sales, 106 Cal. App. 3d 171, 165 Cal. Rptr. 38, 28 U.C.C. Rep. Serv. 1412 (2d Dist. 1980).

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§ 411. Payee as indorser

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 243, 281

The payee, by signing the payee's name on the back of an instrument, becomes an indorser and can be held chargeable in no other capacity unless the payee adds proper words to create a different relationship.[1]

Footnotes

[1] Seattle-First Nat. Bank v. Kim, 38 Wash. App. 101, 684 P.2d 773, 39 U.C.C. Rep. Serv. 537 (Div. 1 1984).

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4. Indorser

§ 412. Delay in use of check

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 256, 301

Treatises and Practice Aids

As to delay in presentment or deposit, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Forms

Forms relating to delay in presentment, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Legal Forms, Article 3 Negotiable Instruments; Uniform Commercial Code Pleading and Practice Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

If an indorser of a check is liable and the check is not presented for payment, or given to a depositary bank for collection, within 30 days after the day the indorsement was made, the liability of the indorser is discharged.[1]

Footnotes

[1] U.C.C. § 3-415(e) [2002], referring to U.C.C. § 3-415(a) [2002].

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§ 413. Requirement of notice of dishonor

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 394, 411.1 to 416, 420, 421

Treatises and Practice Aids

As to notice of dishonor and U.C.C. 3-503 [Rev], see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Forms

Forms relating to notice of dishonor, generally, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Uniform Commercial Code Legal Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

The obligation of an indorser and the obligation of a drawer may not be enforced unless:

(1) the indorser or drawer is given proper notice of dishonor of the instrument;[1] or
(2) notice of dishonor is excused.[2]

Observation:

This subsection is consistent with the 1952 statute,[3] but notice of dishonor is no longer relevant to the liability of a drawer except for the case of a draft accepted by an acceptor other than a bank.[4]

The notice of dishonor required to enforce the liability of a drawer or indorser may be given by any person.[5] There is no requirement that the person giving the notice be a party to the dishonored instrument or the authorized agent of any party.[6]

A notice of dishonor may be given in any form and in any manner that is "commercially reasonable." Notice of dishonor may be oral, written, or electronic communication. If the dishonored instrument had been given to a bank for collection, the return of that instrument by the bank is, in itself, sufficient notice of the dishonor.[7] When an instrument is taken for collection by a collecting bank, the time for giving notice of dishonor is stated in terms of whether it is given by the collecting bank or by any other person. Thus, when the notice is given by the collecting bank, unless any delay is excused, the notice must be given before midnight of the next banking day following the banking day on which the bank receives notice of dishonor of the instrument. When the notice is given by any other person, the notice must be given within 30 days following the day on which the person giving notice itself received notice of the dishonor.[8]

Footnotes

1 U.C.C. § 3-503(a)(i) [2002].

2 U.C.C. § 3-503(a)(ii) [2002], referring to U.C.C. § 3-504(b).

3 U.C.C. § 3-501(2)(a) [1952].

4 U.C.C. § 3-503(b) [2002] Official Comment 1, referring to U.C.C. § 3-414 [2002] Official Comments 2, 4

5 U.C.C. § 3-503(b) [2002].

6 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-503:4 (3d ed.).

7 U.C.C. § 3-503(b) [2002].

8 U.C.C. § 3-503(c) [2002].

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4. Indorser

§ 414. Failure to notify of dishonor

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 256, 301

If notice of dishonor of an instrument is required and the appropriate notice of dishonor is not given to an indorser, the liability of the indorser to pay the amount due on the instrument is discharged.[1]

Footnotes

[1] U.C.C. § 3-415(c) [2002], referring to U.C.C. §§ 3-415(a), 3-503 [2002].

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4. Indorser

§ 415. Transfer warranties

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

A person who transfers an instrument by indorsement warrants to the transferee and any subsequent transferee that:
(1) the warrantor is a person entitled to enforce the instrument;[1]
(2) all signatures on the instrument are authentic and authorized;[2]
(3) the instrument has not been altered;[3]

(4) the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor;[4] and
(5) the warrantor has no knowledge of any insolvency proceeding commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.[5]
These warranties cannot be disclaimed with respect to checks.[6]

Additional similar warranties are given by customers and collecting banks on the transfer and presentment of items in the bank collection process.[7] The provisions in Article 3 fix the same warranties for the collection of items through the banking system that the parallel provision in Article 4 establishes for the transfer of commercial paper not collected through the banking system.[8]

Footnotes

1 § 469.

2 § 470.

[3] § 471.

[4] § 472.

[5] § 473.

[6] § 478.

[7] U.C.C. § 4-207 [2002].
The bank listed as the payor's bank on a counterfeit check in the amount of $486,750.33 was not entitled to reimbursement from the payee or the payee's bank after the payee deposited the check and directed that the entire amount be transferred to a third party, and the payor's bank reimbursed the payor's account for the full amount, provisions for restitution by mistake or reasonable commercial standards of fair dealing, where the payee and the payee's bank reasonably believed that they were engaged in innocent, commonplace banking activity, and there was no showing that they knew the check was counterfeit. First American Bank v. Federal Reserve Bank of Atlanta, 842 F.3d 487, 91 U.C.C. Rep. Serv. 2d 257 (7th Cir. 2016) (applying Illinois law).

[8] Sun 'n Sand, Inc. v. United California Bank, 21 Cal. 3d 671, 148 Cal. Rptr. 329, 582 P.2d 920, 21 U.C.C. Rep. Serv. 2d 1003 (1978).

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XI. Liability of Parties

B. Particular Types of Parties

4. Indorser

§ 416. Without recourse indorsement

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 293, 296

Treatises and Practice Aids

As to obligation of indorser, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Forms

Forms relating to indorsements disclaiming liability, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Uniform Commercial Code Legal Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

If an indorsement states that it is made "without recourse" or otherwise disclaims liability of the indorser, the indorser is not liable under to pay the instrument.[1] An indorser indorses an instrument without recourse in order to negotiate the instrument while not incurring liability in the event the instrument is later dishonored.[2]

The only effect of adding "without recourse" to an indorsement is to disclaim the liability that would otherwise arise.[3] It does not limit the indorser's liability for breach of any of the warranties made on transfer or on presentment for payment. An indorser cannot disclaim either the transfer or presentment warranties with respect to checks. In order to disclaim warranty

liability as to other instruments, the indorser must indicate that any liability under the presentment or transfer warranties, as the case may be, is also disclaimed.[4] An indorser of a negotiable instrument assumes credit liability unless the indorser disclaims it by indorsing the instrument "without recourse." Such indorsement does not, however, disclaim applicable transfer and presentment warranties.[5]

Footnotes

1 U.C.C. § 3-415(b) [2002], referring to U.C.C. § 3-415(a) [2002].

2 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-415:7 [Rev.] (3d ed.).

3 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-415:7 [Rev.] (3d ed.), referring to U.C.C. § 3-415(a) [2002].

4 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-415:7 [Rev.] (3d ed.).

5 LifeWise Master Funding v. Telebank, 374 F.3d 917, 53 U.C.C. Rep. Serv. 2d 1020 (10th Cir. 2004).

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XI. Liability of Parties

B. Particular Types of Parties

4. Indorser

§ 417. Parol evidence

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 287

Treatises and Practice Aids

As to construction in favor of indorsement—what is not an indorsement, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement.[1] In determining whether a signature on an instrument is an indorsement, the testimony of the signer as to the signer's subjective intent is irrelevant. With the exception of this exclusion, the "other circumstances" provision appears to allow the admission of parol evidence as to any matter relating to whether the signing was intended as an indorsement.[2]

Footnotes

1 U.C.C. § 3-204(a) [2002].

2 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-204:8 [Rev.] (3d ed.).

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B. Particular Types of Parties

4. Indorser

§ 418. Parties to whom indorser is liable

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 280.1, 286 to 295, 308

The obligation of the indorser is owed to a person entitled to enforce the instrument or to a subsequent indorser who paid the instrument.[1]

Comment:

As stated in this provision, the obligation of an indorser to pay the amount due on the instrument is generally owed not only to a person entitled to enforce the instrument but also to a subsequent indorser who paid the instrument. But if the prior indorser and the subsequent indorser are both anomalous indorsers, this rule does not apply. In that case, U.C.C. § 3-116 applies. Under U.C.C. § 3-116(a), the anomalous indorsers are jointly and severally liable and if either pays the instrument the indorser who pays has a right of contribution against the other. The right to contribution in U.C.C. § 3-116(b) is subject to "agreement of the affected parties." Suppose the subsequent indorser can prove an agreement with the prior indorser under which the prior indorser agreed to treat the subsequent indorser as a guarantor of the obligation of the prior indorser. Rights of the two indorsers between themselves would be governed by the agreement. Under suretyship law, the subsequent indorser under such an agreement is referred to as a subsurety. Under the agreement, if the subsequent indorser pays the instrument there is a right to reimbursement from the prior indorser; if the prior indorser pays the instrument, there is no right of recourse against the subsequent indorser.[2]

A party who indorses a check in blank is strictly liable to the person to whom the indorsed check is delivered.[3]

Footnotes

[1] U.C.C. § 3-415(a) [2002].

[2] U.C.C. § 3-415 [2002] Official Comment 5.
As to joint, or joint and several, liability, see § 390.
As to the right to contribution, see § 391.

[3] Cincinnati Cent. Credit Union v. Goss, 66 Ohio Misc. 2d 60, 642 N.E.2d 1176, 27 U.C.C. Rep. Serv. 2d 165 (Mun. Ct. 1994).
A person in possession of the instrument but who is not the original lender can still be a holder, but only if the instrument bears a special indorsement in the person's favor or a blank indorsement. St. Clair v. U.S. Bank Nat. Ass'n, 173 So. 3d 1045 (Fla. 2d DCA 2015).

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XI. Liability of Parties

B. Particular Types of Parties

4. Indorser

§ 419. Joint and several liability

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 272

Treatises and Practice Aids

As to joint and several liability; contribution, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Forms

Forms relating to joint and several liability, general endorser/indorser, see Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Pleading and Practice Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

As a general rule, indorsers are not jointly and severally liable. Rather, they are liable in the order in which they sign. There are two situations in which indorsers are presumed to be jointly and severally liable. First, copayees who indorse an instrument are jointly and severally liable unless one payee is accommodating the other payee, or they agree to be liable otherwise as jointly and severally. Second, persons who sign as anomalous indorsers for the purpose of accommodating the maker are jointly and severally liable unless one anomalous indorser is acting as subsurety for the other anomalous indorser.[1]

Footnotes

[1] U.C.C. § 3-116 [2002] Official Comment 2.
As to joint and several liability on an instrument in general, see § 390.

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XI. Liability of Parties

C. Accommodation Parties

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 49, 96, 121, 122, 371, 440

A.L.R. Library

A.L.R. Index, Accommodation Party or Paper
A.L.R. Index, Agency
A.L.R. Index, Bills and Notes
A.L.R. Index, Checks and Drafts
A.L.R. Index, Indorsements
A.L.R. Index, Parol Evidence
A.L.R. Index, Principal and Surety
A.L.R. Index, Signatures
A.L.R. Index, Uniform Commercial Code (UCC)
West's A.L.R. Digest, Bills and Notes 49, 96, 121, 122, 371, 440

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XI. Liability of Parties

C. Accommodation Parties

1. In General

§ 420. Accommodation paper and parties; generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 49, 96, 121, 122, 371

A.L.R. Library

Who is accommodation party under Uniform Commercial Code sec. 3-415, 90 A.L.R.3d 342

Trial Strategy

Status as Accommodation Party, 7 Am. Jur. Proof of Facts 2d 283

Forms

Forms relating to accommodated party, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Pleading and Practice Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another

party to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation."[1] An accommodation party is a person who signs an instrument to benefit the accommodated party either by signing at the time value is obtained by the accommodated party or later, and who is not a direct beneficiary of the value obtained.[2] An accommodation party will usually be a comaker or anomalous indorser.[3] Thus, the pre-Code principle that a comaker of a promissory note may be an accommodation party is not altered by the Uniform Commercial Code.[4] A person is a "comaker" if the contract personally binds that person, jointly and severally, with a principal.[5]

Although "accommodation makers" are popularly referred to as "comakers," their contract is one of suretyship[6] and should be distinguished from the contract of a joint maker.[7] One who signs a promissory note as a maker cannot be an accommodation maker, even though the purpose and effect of signing the note is the securing of funds for a third party, where the third party is not shown on the face of the instrument to be a party to the note.[8]

An accommodation party, who incurs liability on an instrument without being a direct beneficiary of the value given, is one who signs the instrument for the purpose of lending credit to some other person or party.[9] By signing a promissory note for accommodation, a person incurs liability as an accommodation party.[10]

The person claiming to be an accommodation party to a negotiable instrument has the burden of establishing accommodation status.[11]

Footnotes

1 U.C.C. § 3-419(a) [2002].
The husband was not discharged from his obligation to repay a promissory note signed by himself and his wife, regardless of any status he may have held as an accommodation party, by the lenders' failure to obtain the husband's consent before the lenders waived their right to foreclose their third mortgage; the husband failed to establish that the lenders knew of the alleged accommodation, and signed the promissory note as a maker. Zavadil v. Rud, 2014 ND 38, 842 N.W.2d 902, 82 U.C.C. Rep. Serv. 2d 751 (N.D. 2014).
Even if being merely an accommodation party would have relieved the promissory note maker of the obligation to pay under the terms of notes, the maker was not merely an accommodation party under the three notes executed by the maker; the notes did not include any obligated party other than the maker, the maker was identified as the sole borrower in the notes, and the maker signed the notes in that capacity. Wooden v. Synovus Bank, 325 Ga. App. 876, 756 S.E.2d 19 (2014).

2 U.C.C. § 3-419 [2002] Official Comment 1.

3 U.C.C. § 3-419 [2002] Official Comment 1.

4 Buchta v. Seng, 444 N.E.2d 1250 (Ind. Ct. App. 1983); LeRoy v. Marquette Nat. Bank of Minneapolis, 277 N.W.2d 351, 25 U.C.C. Rep. Serv. 1390 (Minn. 1979).
An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser. Whisnant v. Carolina Farm Credit, 204 N.C. App. 84, 693 S.E.2d 149, 72 U.C.C. Rep. Serv. 2d 301 (2010).

5 Trebelhorn v. Agrawal, 905 N.W.2d 237, 94 U.C.C. Rep. Serv. 2d 241 (Minn. Ct. App. 2017).

6 Palmetto Leasing Co. v. Chiles, 235 Ill. App. 3d 986, 176 Ill. Dec. 770, 602 N.E.2d 77, 19 U.C.C. Rep. Serv. 2d 487 (2d Dist. 1992); V. I. P. Commercial Contractors v. Alkas, 553 S.W.2d 656 (Tex. Civ. App. San Antonio 1977).
As to the suretyship character of accommodation makers, see § 421.

7 Duke v. First Nat. Bank of Port Arthur, 698 S.W.2d 230, 42 U.C.C. Rep. Serv. 487 (Tex. App. Beaumont 1985).

8 Jones v. San Angelo Nat. Bank of San Angelo, 518 S.W.2d 622, 16 U.C.C. Rep. Serv. 787 (Tex. Civ. App. Beaumont 1974), writ refused n.r.e., (June 4, 1975).

9 Walker v. Probandt, 25 Neb. App. 30, 902 N.W.2d 468, 93 U.C.C. Rep. Serv. 2d 838 (2017), review denied, (May 8,

2018) and cert. denied, 139 S. Ct. 333, 202 L. Ed. 2d 223 (2018).

[10] In re Clore, 547 B.R. 915 (Bankr. C.D. Ill. 2016) (applying Illinois law).

[11] Zavadil v. Rud, 2014 ND 38, 842 N.W.2d 902, 82 U.C.C. Rep. Serv. 2d 751 (N.D. 2014) (holding that the husband who signed a promissory note as a maker was jointly and severally liable with his wife for the indebtedness under the note, regardless of whether he met his burden of establishing that he was an accommodation party to the note, where the husband's signature was not accompanied by words that unambiguously indicated he was guaranteeing collection rather than payment of the obligation of the wife borrower).

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XI. Liability of Parties

C. Accommodation Parties

1. In General

§ 421. Suretyship character of accommodation party

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 49, 121, 122

An accommodation party is considered a surety.[1] A surety who is not a party to the instrument, however, is not an accommodation party.[2] For example, if M issues a note payable to the order of P, and S signs a separate contract in which S agrees to pay P the amount of the instrument if it is dishonored, S is a surety, but is not an accommodation party. In such a case, S's rights and duties are determined under the general law of suretyship.[3]

Caution:

In unusual cases, two parties to an instrument may have a surety relationship that is not governed by Article 3 of the Uniform Commercial Code, because the requirements of § 3-419(a) are not met. In those cases, the general law of suretyship applies to the relationship.[4]

Except to the extent that it is displaced by provisions of Article 3, the general law of suretyship also applies to the rights of accommodation parties.[5] Thus, as between the accommodation party and the holder, the law of suretyship applies.[6] A known accommodation party may raise any of the suretyship defenses, such as the failure of the creditor to disclose facts material to the risk, such as the existence of a default as to interest payments, and such as the making of other secret loans to the accommodated party.[7]

Any party to a negotiable instrument may be a "surety" if the party signs for the accommodation of another party; this

includes makers and comakers who sign for accommodation purposes.[8]

Footnotes

1 Rowan v. Riley, 139 Idaho 49, 72 P.3d 889, 50 U.C.C. Rep. Serv. 2d 1127 (2003); Irish v. Woods, 864 N.E.2d 1117, 62 U.C.C. Rep. Serv. 2d 607 (Ind. Ct. App. 2007); Rodehorst v. Gartner, 266 Neb. 842, 669 N.W.2d 679, 51 U.C.C. Rep. Serv. 2d 604 (2003).
Depending upon the intent of the parties and whether descriptive words accompany the signature, an accommodation party may be an accommodation maker, a surety, or a guarantor. In re Clore, 547 B.R. 915 (Bankr. C.D. Ill. 2016) (applying Illinois law).

2 U.C.C. § 3-419 [2002] Official Comment 3.

3 U.C.C. § 3-419 [2002] Official Comment 3.

4 U.C.C. § 3-419 [2002] Official Comment 3.

5 U.C.C. § 3-419 [2002] Official Comment 7.
Suretyship law applied to the loan cosigners' tort claims against the lender, regardless of whether the lender filed a motion to dismiss or a motion for summary judgment; viewed in the light most favorable to the cosigners, the evidence forecast that they had cosigned a promissory note and therefore incurred liability, that they had signed the note in order for their extended family to receive financing for a greenhouse in which the cosigners had no ownership interest and from which they would receive no financial benefit, and that the cosigners were not recipients of the loan proceeds, such that they were accommodation parties and therefore sureties. Whisnant v. Carolina Farm Credit, 204 N.C. App. 84, 693 S.E.2d 149, 72 U.C.C. Rep. Serv. 2d 301 (2010).

6 Sims v. Asian Intern., Ltd., 521 So. 2d 411, 6 U.C.C. Rep. Serv. 2d 171 (La. Ct. App. 1st Cir. 1987), writ denied, 523 So. 2d 1337 (La. 1988); Bixenstine v. Palacios, 805 S.W.2d 889 (Tex. App. Corpus Christi 1991) (decided under the pre-1990 U.C.C.).

7 Camp v. First Financial Federal Sav. and Loan Ass'n, 299 Ark. 455, 772 S.W.2d 602 (1989).

8 Whisnant v. Carolina Farm Credit, 204 N.C. App. 84, 693 S.E.2d 149, 72 U.C.C. Rep. Serv. 2d 301 (2010).

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C. Accommodation Parties

1. In General

§ 422. Liability in capacity in which party signed

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 49

A.L.R. Library

Liability of indorser, other than payee or transferee, of nonnegotiable instrument, 18 A.L.R.3d 647

Insanity of maker, drawer, or indorser as defense against holder in due course, 24 A.L.R.2d 1380

Forms

Forms relating to complaints against irregular indorser, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

Forms relating to accommodation party, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Pleading and Practice Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, except as otherwise provided, is obliged to pay the instrument in the capacity in which the accommodation party signs.[1] In most cases, that capacity will be either that of a maker or indorser of a note.[2] To determine whether a party is an accommodation maker of a note, the entire transaction should be viewed as a whole.[3]

The nature of the liabilities of an accommodation party is determined by the capacity in which the party signed the promissory note.[4]

The liability of an accommodation party is to the payee, where the accommodation party signs, as a comaker, for the accommodation of a maker, who is the principal obligor.[5] Likewise, the liability of an indorser, who indorses a promissory note for the accommodation of the maker is to the payee.[6]

Footnotes

1 U.C.C. § 3-419(b) [2002], referring to U.C.C. § 3-419(d) [2002].

2 U.C.C. § 3-419 [2002] Official Comment 4, providing further that if the signature of the accommodation party is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the instrument, liability is limited to that stated in subsection (d).

3 Stockwell v. Bloomfield State Bank, 174 Ind. App. 307, 367 N.E.2d 42, 22 U.C.C. Rep. Serv. 726 (1977) (overruled on other grounds by, Farner v. Farner, 480 N.E.2d 251 (Ind. Ct. App. 1985)).

4 Keesling v. T.E.K. Partners, LLC, 861 N.E.2d 1246 (Ind. Ct. App. 2007).
Even if officers of the plaintiff bank were aware that proceeds of the loan to the defendant were to be paid over to a third party and that the defendant was executing the loan as an accommodation to the third party, the bank could recover the proceeds of the loan from the defendant as the sole signatory on the note, since an accommodation party is liable in the capacity in which the accommodation party has signed the note, even though the lender knows of the accommodation. Berkshire Bank v. Schwartz, 191 A.D.2d 260, 595 N.Y.S.2d 19 (1st Dep't 1993).

5 V. I. P. Commercial Contractors v. Alkas, 553 S.W.2d 656 (Tex. Civ. App. San Antonio 1977) (decided under pre-1990 version); Warren v. Washington Trust Bank, 19 Wash. App. 348, 575 P.2d 1077, 23 U.C.C. Rep. Serv. 966 (Div. 3 1978), judgment modified on other grounds, 92 Wash. 2d 381, 598 P.2d 701 (1979).

6 First Nat. Bank of Atlanta v. Hargrove, 503 S.W.2d 856, 14 U.C.C. Rep. Serv. 154 (Tex. Civ. App. Texarkana 1973) (where the accommodation indorser was an anomalous or irregular indorser).
Whether technically classified as an accommodation party, maker, or surety, a truck purchaser who signed a note assuming the original purchaser's obligation, whose every request, wish, and desire was granted by the vendor's senior vice-president, and who exercised dominion over and had the use and possession of the truck for a number of months, paying a series of installment payments before falling into default, was liable on the instrument he signed. Duke v. First Nat. Bank of Port Arthur, 698 S.W.2d 230, 42 U.C.C. Rep. Serv. 487 (Tex. App. Beaumont 1985).

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C. Accommodation Parties

1. In General

§ 423. Necessity of consideration or value

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 96

Treatises and Practice Aids

As to defenses of accommodation party—lack of consideration no defense, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

The obligation of an accommodation party may be enforced notwithstanding any Statute of Frauds and whether or not the accommodation party receives any consideration for the accommodation.[1] Often, in fact, there will be consideration in that the signature will typically occur in order to obtain the forbearance of the creditor from accelerating the accommodated party's debt or from bringing an action to enforced it.[2]

It does not matter whether an accommodation party signs gratuitously either at the time the instrument is issued or after the instrument is in the possession of a holder.[3] The obligation of the accommodation party is supported by any consideration for which the instrument is taken before it is due.[4] This section of the Uniform Commercial Code is intended to change occasional decisions holding that there is no sufficient consideration where an accommodation party signs a note after it is in the hands of a holder who has given value.[5] The accommodation party is liable to the holder in such a case, even though there is no extension of time or other concession.[6]

The original consideration on an instrument will support the obligation of a subsequent indorser.[7] Thus, the failure of an accommodation party to personally receive consideration is not a defense to its obligation to pay the instrument.[8]

Footnotes

1 U.C.C. § 3-419(b) [2002].

2 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-419:14 [Rev.] (3d ed.).

3 U.C.C. § 3-419 [2002] Official Comment 2.

4 U.C.C. § 3-419 [2002] Official Comment 2.

5 U.C.C. § 3-419 [2002] Official Comment 2.

6 U.C.C. § 3-419 [2002] Official Comment 2.

7 Pan American Bank of Tampa v. Sullivan, 375 So. 2d 338 (Fla. 4th DCA 1979).
The liability of an accommodation maker is supported by the consideration that flows from the creditor to the principal debtor. Pitrolo v. Community Bank & Trust, N.A., 171 W. Va. 317, 298 S.E.2d 853, 35 U.C.C. Rep. Serv. 192 (1982).

8 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-419:14 [Rev.] (3d ed.).

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XI. Liability of Parties

C. Accommodation Parties

1. In General

§ 424. Corporate accommodation paper

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 49, 122

A.L.R. Library

Authority of officer or agent to bind corporation as guarantor or surety, 34 A.L.R.2d 290

As a general rule in the absence of statute, the execution or indorsement of accommodation paper for the benefit of third persons is an act beyond the scope of corporate powers.[1] An agent or an officer of a corporation has no implied authority to bind a corporation by an accommodation indorsement.[2]

Footnotes

1 J. Schnarr & Co. v. Virginia-Carolina Chemical Corp., 118 Fla. 258, 159 So. 39 (1934).

2 Citizens' Nat. Bank of Fernandina v. Florida Tie & Lumber Co., 81 Fla. 889, 89 So. 139 (1921).
In an action by a payee-holder of a corporate note against the corporate officer who indorsed it, the defendant's testimony that the loan, for which the note in suit was executed, was exclusively the debt of the corporate maker and was to be repaid out of corporate funds failed to rebut the inference that the defendant was an accommodation indorser of the note who had bound himself to pay it according to its tenor at the time of his indorsement. Bizzoco v. Chinitz, 193 Conn. 304, 476 A.2d 572, 39 U.C.C. Rep. Serv. 540 (1984).
A corporation which signed a promissory note as a comaker together with five shareholders and their wives was the

primary debtor on a note along with the individual shareholders and their wives, rather than an accommodation party, because the note on its face did not indicate that some signers were principals while others were sureties, and the evidence showed that the corporation alone received the entire benefit from the note's proceeds. Harrington v. U.S., 605 F. Supp. 53 (D. Del. 1985).

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2. Determination of Accommodation Character

§ 425. Admission of parol evidence, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 122

Treatises and Practice Aids

As to determination of accommodation character, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

In some cases, an examination of the instrument will not in itself disclose the existence of an accommodation relationship.[1] This is the case when there are coparties, such as comakers, and nothing is added to the instrument to show that one of them is signing for an accommodation.[2]

In such cases, parol evidence is admissible to determine the existence of an accommodation.[3] Thus, parol evidence is admissible to show that a maker is an accommodation maker and therefore may assert suretyship defenses.[4]

Footnotes

1 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-419:7 [Rev.] (3d ed.).

2 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-419:7 [Rev.] (3d ed.).

3 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-419:7 [Rev.] (3d ed.).

[4] Cohen v. Northside Bank & Trust Co., 207 Ga. App. 536, 428 S.E.2d 354 (1993).

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§ 426. Presumption of accommodation character

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 122

A.L.R. Library

Guaranty of payment as covering principal debtor's liability as an indorser on third person's note or other negotiable instrument, 85 A.L.R.2d 1183

Forms

Forms relating to guaranty, generally, see Am. Jur. Legal Forms 2d, Bills and Notes; Am. Jur. Legal Forms 2d, Uniform Commercial Code; Uniform Commercial Code Legal Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument.[1] A party challenging accommodation party status would have to rebut this presumption by producing evidence that the signer was, in fact, a direct beneficiary of the value given for the instrument.[2]

Except as otherwise provided, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.[3]

Footnotes

1 U.C.C. § 3-419(c) [2002].

2 U.C.C. § 3-419 [2002] Official Comment 3.

3 U.C.C. § 3-419(c) [2002], referring to U.C.C. § 3-605 [2002].

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§ 427. Question of fact

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 122

Whether a person is an accommodation party is a question of fact.[1] The question as to whether a party is an accommodation party depends on the signer's purpose in signing, and the question of purpose or intent is a factual question to be resolved by the trier of fact.[2] Whether a signer of a note is an accommodation party presents a question of fact, and must be determined based upon the facts and circumstances in existence at the time the note is signed.[3]

It is almost always the case that a comaker who signs with words of guaranty after the signature is an accommodation party.[4] The same is true of an anomalous indorser.[5] In either case, a person taking the instrument is put on notice of the accommodation status of the comaker or indorser.[6]

The courts are inclined to recognize one as an accommodation maker on a note when:[7]

(1) the party did not participate in negotiations for credit or subsequent modifications of credit arrangements;

(2) the evidence shows that the creditor was aware the party was not the one seeking the credit;

(3) the party is not the one to whom the proceeds are credited; and

(4) the party has no interest in the purpose for which the proceeds are used.

Practice Tip:

Subsequent events do not change a party from an accommodation party into a comaker, because once a signer's status has been established, it is not subject to change.[8]

Footnotes

1 U.C.C. § 3-419 [2002] Official Comment 3.

2 Rowan v. Riley, 139 Idaho 49, 72 P.3d 889, 50 U.C.C. Rep. Serv. 2d 1127 (2003).

3 Board of County Com'ns of County of Park v. Park County Sportsmen's Ranch, LLP, 271 P.3d 562, 75 U.C.C. Rep. Serv. 2d 909 (Colo. App. 2011).

4 U.C.C. § 3-419 [2002] Official Comment 3.

5 U.C.C. § 3-419 [2002] Official Comment 3.

6 U.C.C. § 3-419 [2002] Official Comment 3.

7 Agribank, FCB v. Whitlock, 251 Ill. App. 3d 299, 190 Ill. Dec. 514, 621 N.E.2d 967 (4th Dist. 1993).

8 Commercial Mortg. and Finance Co. v. American Nat. Bank and Trust Co. of Chicago, 253 Ill. App. 3d 697, 191 Ill. Dec. 745, 624 N.E.2d 933, 25 U.C.C. Rep. Serv. 2d 139 (2d Dist. 1993).

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§ 428. Factors considered

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 49, 122

The accommodation status of a party to a note must be determined from the circumstances in existence at the time the note is issued.[1] Courts examine a number of factors in determining a party's status as an accommodation maker.[2] The intention of the parties is a significant element in determining whether a party is an accommodation maker or a comaker.[3]

There is a slight variation among the jurisdictions regarding the factors used to determine whether a signer on an instrument is an accommodation maker or a comaker. In some jurisdictions, the factors are identified as follows:[4]

(1) the party did not participate in negotiations for credit or subsequent modifications of credit arrangements;

(2) the creditor was aware that the party was not the one seeking the credit;

(3) the party is not the one to whom the proceeds were credited; and

(4) the party has no interest in the purpose for which the proceeds were used.

In other jurisdictions, the factors used to determine whether a party has signed a note in an accommodation or principal maker status are:[5]

(1) the location of the signature on the note;

(2) the language of the note;

(3) whether the maker received any loan proceeds; and

(4) the intent of the parties.

Another factor determinative of a signing party's status is the party's purpose in executing the instrument.[6]

Footnotes

[1] Cranfill v. Union Planters Bank, N.A., 86 Ark. App. 1, 158 S.W.3d 703, 53 U.C.C. Rep. Serv. 2d 287 (2004).

[2] Belden v. Thorkildsen, 2007 WY 68, 156 P.3d 320, 62 U.C.C. Rep. Serv. 2d 646 (Wyo. 2007).

[3] In re Heritage Organization, L.L.C., 354 B.R. 407, 61 U.C.C. Rep. Serv. 2d 952 (Bankr. N.D. Tex. 2006); Cranfill v. Union Planters Bank, N.A., 86 Ark. App. 1, 158 S.W.3d 703, 53 U.C.C. Rep. Serv. 2d 287 (2004); Darien Bank v. Miller, 208 Ga. App. 562, 431 S.E.2d 165 (1993); Palmetto Leasing Co. v. Chiles, 235 Ill. App. 3d 986, 176 Ill. Dec. 770, 602 N.E.2d 77, 19 U.C.C. Rep. Serv. 2d 487 (2d Dist. 1992); General Motors Acceptance Corp. v. Jackson, 614 So. 2d 302, 20 U.C.C. Rep. Serv. 2d 1014 (La. Ct. App. 4th Cir. 1993); Sack Lumber Co. v. Goosic, 15 Neb. App. 529, 732 N.W.2d 690 (2007); Branch Banking and Trust Co. v. Thompson, 107 N.C. App. 53, 418 S.E.2d 694, 18 U.C.C. Rep. Serv. 2d 506 (1992); Commerce Union Bank v. Davis, 581 S.W.2d 142, 26 U.C.C. Rep. Serv. 971 (Tenn. Ct. App. 1978).

[4] Commercial Mortg. and Finance Co. v. American Nat. Bank and Trust Co. of Chicago, 253 Ill. App. 3d 697, 191 Ill. Dec. 745, 624 N.E.2d 933, 25 U.C.C. Rep. Serv. 2d 139 (2d Dist. 1993); Rahall v. Tweel, 186 W. Va. 136, 411 S.E.2d 461, 16 U.C.C. Rep. Serv. 2d 1103 (1991).

[5] In re Baker & Getty Financial Services, Inc., 974 F.2d 712, 20 U.C.C. Rep. Serv. 2d 1008 (6th Cir. 1992); In re Rust, 510 B.R. 562, 304 Ed. Law Rep. 1066 (Bankr. E.D. Ky. 2014) (applying Ohio law), holding that an individual who cosigned a promissory note to enable a student-borrower to obtain a loan for which she would not otherwise have qualified, who was only liable to repay the note if the student-borrower failed to pay, and who did not receive any of the loan proceeds, signed the note as an "accommodation party," so as to be subrogated to the lender's rights upon his payment of the note.

[6] Bank South v. Jones, 185 Ga. App. 125, 364 S.E.2d 281, 5 U.C.C. Rep. Serv. 2d 644 (1987).
A person is not an accommodation party when the person accommodates merely by writing a check as a means of transmitting payment for another person. Palmetto Leasing Co. v. Chiles, 235 Ill. App. 3d 986, 176 Ill. Dec. 770, 602 N.E.2d 77, 19 U.C.C. Rep. Serv. 2d 487 (2d Dist. 1992).

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2. Determination of Accommodation Character

§ 429. Direct benefits test

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 122

One factor to consider in determining accommodation party status is whether the party claiming accommodation party status received a direct benefit from the execution of the instrument.[1] Where a party places the party's signature on a note solely for the benefit of another party, and without receiving any direct benefit, the party is an "accommodation party."[2] Therefore, the fact that a comaker received none of the proceeds of the loan is some evidence that the comaker is an accommodation maker.[3]

The fact that the signer receives some benefit from the transaction does not disqualify the signer from being an accommodation party, but the signer is not such a party if the signer receives the primary benefit of the transaction.[4] While receipt of direct benefit is a dispositive consideration in determining whether a party qualifies as an "accommodation party," against whom an accommodated party can have no claim for contribution, courts still consider the totality of the circumstances in assessing a party's accommodation status.[5]

Footnotes

1 In re Heritage Organization, L.L.C., 354 B.R. 407, 61 U.C.C. Rep. Serv. 2d 952 (Bankr. N.D. Tex. 2006).

2 Irish v. Woods, 864 N.E.2d 1117, 62 U.C.C. Rep. Serv. 2d 607 (Ind. Ct. App. 2007).

3 Dalton v. George B. Hatley Co., Inc., 634 S.W.2d 374, 34 U.C.C. Rep. Serv. 213 (Tex. App. Austin 1982).
A company that signed a promissory note as a maker was an accommodation party with respect to the note, where the company pledged its real estate to secure the money advanced to a limited liability company (LLC) to develop another parcel titled in the LLC, in which parcel the company had no interest; the company received no value for its pledge and therefore was not an ordinary maker. Keesling v. T.E.K. Partners, LLC, 861 N.E.2d 1246 (Ind. Ct. App. 2007).
A landowner, a former tenant-in-common prior to a partition, was an accommodation party in connection with a note

she had signed for a former cotenant, as her only interest was to obtain funds for the cotenant, and thus she was only secondarily liable on the note; the landowner did not make any payments on the note, there was no evidence the landowner received anything meaningful or of value for signing the note, and there was no evidence that the cotenant's rent was reduced to reflect debt payments. Rowan v. Riley, 139 Idaho 49, 72 P.3d 889, 50 U.C.C. Rep. Serv. 2d 1127 (2003).

[4] In re TML, Inc., 291 B.R. 400, 50 U.C.C. Rep. Serv. 2d 511 (Bankr. W.D. Mich. 2003); Cliff Findlay Automotive, LLC v. Olson, 228 Ariz. 115, 263 P.3d 664, 75 U.C.C. Rep. Serv. 2d 636 (Ct. App. Div. 1 2011); Branch Banking and Trust Co. v. Thompson, 107 N.C. App. 53, 418 S.E.2d 694, 18 U.C.C. Rep. Serv. 2d 506 (1992).

[5] In re Simpson, 474 B.R. 656, 78 U.C.C. Rep. Serv. 2d 48 (Bankr. S.D. Ind. 2012) (applying Indiana law).
As to the right to contribution, generally, see § 391.
As to the liability of an accommodated party and an accommodation party to each other, see §§ 431, 432.

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§ 430. Direct benefits test—Direct benefit and indirect benefit distinguished

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 122

One can be an accommodation party where one receives only an indirect benefit of the value given for an instrument.[1] The Uniform Commercial Code section dealing with instruments signed for accommodation distinguishes between direct and indirect benefit.[2]

Comment:

If X cosigns a note of Corporation that is given for a loan to Corporation, X is an accommodation party if no part of the loan was paid to X or for X's direct benefit. This result is true, even though X may receive indirect benefit from the loan because X is employed by Corporation or is a stockholder of Corporation, or even if X is the sole stockholder so long as Corporation and X are recognized as separate entities.[3]

Footnotes

1 Sack Lumber Co. v. Goosic, 15 Neb. App. 529, 732 N.W.2d 690 (2007).

2 U.C.C. § 3-419 [2002] Official Comment 1.

[3] U.C.C. § 3-419 [2002] Official Comment 1.

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3. Relationship and Liabilities Between Accommodation Party and Accommodated Party

§ 431. Liability of accommodated party to accommodation party

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 440

Treatises and Practice Aids

As to reimbursement of accommodation party, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Forms

Forms relating to complaints by maker of accommodation note, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

Forms relating to reimbursement or indemnification of accommodation or recovery against accommodated party or against drawer, see Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Pleading and Practice Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

An accommodation party who pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party.[1] The rationale behind this rule is that an accommodation party is a surety and the accommodated party is a principal, and if the surety is forced to pay the instrument, then the surety has a right of recourse against the principal.[2] In proper circumstances, an accommodation party may obtain relief that requires the accommodated party to perform its obligations on the instrument.[3]

Payment of the obligation by an accommodation party is a condition precedent to the right of recovery by way of indemnification from the accommodated party.[4] It is immaterial whether the payment was made voluntarily or under threat of being sued.[5]

In occasional cases, the accommodation party might pay the instrument, even though the accommodated party had a defense to its obligation that was available to the accommodation party. In such cases, the accommodation party's right to reimbursement may conflict with the accommodated party's right to raise its defense. If the accommodation party pays the instrument without being aware of the defense, then the accommodation party should be entitled to reimbursement. If the accommodation party paid the instrument with knowledge of the defense, then to the extent of the defense, reimbursement ordinarily would not be justified, but under some circumstances reimbursement may be justified depending upon the facts of the case. The resolution of this conflict is left to the general law of suretyship.[6]

Footnotes

1 U.C.C. § 3-419(f) [2002].
Regardless of the capacity in which an accommodation party signed the instrument, the accommodation party has the right to enforce the instrument that the accommodation party has paid. In re Rust, 510 B.R. 562, 304 Ed. Law Rep. 1066 (Bankr. E.D. Ky. 2014) (applying Ohio law).

2 Caito v. United California Bank, 20 Cal. 3d 694, 144 Cal. Rptr. 751, 576 P.2d 466 (1978); Rowan v. Riley, 139 Idaho 49, 72 P.3d 889, 50 U.C.C. Rep. Serv. 2d 1127 (2003); Home Center Supply of Maryland, Inc. v. Certainteed Corp., 59 Md. App. 495, 476 A.2d 724, 38 U.C.C. Rep. Serv. 1300 (1984).

3 U.C.C. § 3-419(f) [2002].

4 Savings Bank of Manchester v. Kane, 35 Conn. Supp. 82, 396 A.2d 952 (C.P. 1978); New England Merchants Nat. Bank v. Latshaw, 12 Mass. App. Ct. 150, 421 N.E.2d 1264 (1981); Williamson Leasing Co., Inc. v. Kephart, 627 S.W.2d 683 (Tenn. Ct. App. 1981); Kennedy v. Bank of Ephraim, 594 P.2d 881, 26 U.C.C. Rep. Serv. 558 (Utah 1979).
Because X was an accommodation party, it was entitled to reimbursement or indemnification from the debtor in the amount it paid to the holder in satisfaction of the note. In re TML, Inc., 291 B.R. 400, 50 U.C.C. Rep. Serv. 2d 511 (Bankr. W.D. Mich. 2003).

5 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-419:17 [Rev.] (3d ed.).

6 U.C.C. § 3-419 [2002] Official Comment 6.

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§ 432. Liability of accommodation party to accommodated party

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 440

An accommodated party that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party.[1]

The prohibition against an accommodated party who has paid the instrument from bringing an action for contribution against an accommodation party does not apply if the purported accommodation party has merely signed a separate guaranty agreement. This result occurs, because unless one signs the instrument, one does not qualify as an "accommodation party" within the meaning of the Code. Nonetheless, even in this situation, the common-law would preclude the guarantor from being sued for contribution.[2]

Practice Tip:

The holder's knowledge that a party is an accommodation party does not affect the latter's liability, but if the holder does not have the rights of a holder in due course the accommodation party may raise suretyship defenses against the holder.[3]

Footnotes

[1] U.C.C. § 3-419(f) [2002].
As to the factors considered in determining whether a party is an accommodation party and the direct benefit test, see §§ 428 to 430.

[2] Johnson v. Guerra, 35 Va. Cir. 67, 26 U.C.C. Rep. Serv. 2d 178 (1995).

[3] Cohen v. Northside Bank & Trust Co., 207 Ga. App. 536, 428 S.E.2d 354 (1993).

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§ 433. Subrogation of accommodation party

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 440

Treatises and Practice Aids

As to reimbursement of accommodation party, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Forms

Forms relating to complaints - accommodation party against accommodated party, see Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Pleading and Practice Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

Since the accommodation party that pays the instrument is entitled to enforce the instrument against the accommodated party, the accommodation party also obtains rights to any security interest or other collateral that secures payment of the instrument.[1] If the instrument was secured by collateral, an accommodation party who pays the instrument is subrogated to the rights of the creditor in such collateral.[2] Thus, accommodation makers have a right of recourse against the other parties to the instrument and the collateral that is pledged as security.[3] A guarantor or accommodation party who pays the instrument does not have a mere right of contribution, but is subrogated to the rights of the lender, and may step into the shoes of the

lender and pursue any remedies of the lender.[4]

Footnotes

1 U.C.C. § 3-419 [2002] Official Comment 5.

2 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-419:17 [Rev.] (3d ed.).

3 Executive Bank of Ft. Lauderdale, Fla. v. Tighe, 66 A.D.2d 70, 411 N.Y.S.2d 939, 25 U.C.C. Rep. Serv. 786 (2d Dep't 1978); Payne v. Payne, 219 Va. 12, 245 S.E.2d 133, 24 U.C.C. Rep. Serv. 387 (1978).

4 In re Rust, 510 B.R. 562, 304 Ed. Law Rep. 1066 (Bankr. E.D. Ky. 2014) (applying Ohio law).

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§ 434. Accommodation between spouses

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 440

Where a loan is obtained by a husband and a wife to assist the purposes of one spouse, the other spouse is deemed an accommodation maker.[1]

When a husband and wife sign a note to purchase property and the spouses directly benefit by the use and possession of the property, neither spouse is an accommodation party and the husband and wife are jointly and severally liable as comakers.[2]

Footnotes

1 Fithian v. Jamar, 286 Md. 161, 410 A.2d 569, 27 U.C.C. Rep. Serv. 481 (1979); El-Ce Storms Trust v. Svetahor, 223 Mont. 113, 724 P.2d 704, 2 U.C.C. Rep. Serv. 2d 1593 (1986).
The wife was neither a comaker nor an accommodation party on a promissory note she signed in order to keep her husband's business open, and her signature on the note could not be enforced against her as either as comaker or an accommodation party, although the court would probably have had to hold that she was liable as an accommodation party if the only facts presented were evidence showing that she had no interest in the business for which she was signing, did not wish to sign, was pressured into signing the promissory note without any indication that her credit was needed to approve the line, and only signed after an inventory financier's representative told her that her signature was not important, where that evidence was coupled with evidence that the financier acted under a blanket, illegal, and unreasonable policy of requiring spousal signatures. Transamerica Commercial Finance Corp. v. Naef, 842 P.2d 539, 21 U.C.C. Rep. Serv. 2d 704 (Wyo. 1992).

2 In re Estate of Wray, 842 S.W.2d 211 (Mo. Ct. App. E.D. 1992).

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4. Guarantor

§ 435. Guarantor, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 121

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Construction and effect of U.C.C. sec. 3-416 governing guaranty contracts, 10 A.L.R.4th 897

Forms

Forms relating to guarantor and guarnaties, generally, see Am. Jur. Legal Forms 2d, Bills and Notes; Am. Jur. Legal Forms 2d, Uniform Commercial Code; Uniform Commercial Code Legal Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

A guaranty is a collateral promise to enter for the debt or obligation of another, and, absent language in the instrument to the contrary, a guarantor's liability is usually equal to that of the principal debtor.[1] Thus, when the instrument states that if it is not paid, a named party will supply security for the payment of the instrument, that party is a guarantor.[2]

Article 3 does not govern guaranties that are not ancillary to negotiable instruments; guaranties alone are not negotiable instruments, because they are merely conditional promises to pay a sum certain.[3] Thus, separate continuing guaranties are not instruments for the purpose of the Code.[4] However, a guaranty in a separate writing is subject to Article 3 when it:[5]

• is executed contemporaneously with a negotiable instrument

• is affixed to such instrument

• expressly guarantees the obligation of the instrument

The finding that a party is liable for payment of a note in the capacity as maker is not inconsistent with a finding that such party is also a guarantor of the note.[6]

Practice Tip:

In an action between comakers, parol evidence is admissible to show that it was intended that one of the parties was to be a guarantor.[7]

A guarantor of a promissory note is considered an accommodation party and, as such, is entitled to notification of a sale of the collateral.[8] A legislature's adoption of the revised Code eliminates any suggestion that a guarantor is not an accommodation party or has any obligation distinct from that of an accommodation party.[9]

Footnotes

1 First Interstate Bank of Denver, N.A. v. Colcott Partners IV, 833 P.2d 876 (Colo. App. 1992).

2 Johnson v. Schaub, 867 P.2d 812 (Alaska 1994).
As to notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument, see § 426.

3 Fidelity Nat. Bank v. Reid, 180 Ga. App. 428, 348 S.E.2d 913, 2 U.C.C. Rep. Serv. 2d 553 (1986); Cortez v. National Bank of Commerce of Brownsville, 578 S.W.2d 476 (Tex. Civ. App. Corpus Christi 1979), writ refused n.r.e., (June 27, 1979).

4 Gebrueder Heidemann, K.G. v. A.M.R. Corp., 107 Idaho 275, 688 P.2d 1180, 38 U.C.C. Rep. Serv. 259 (1984); Dominion Bank of Middle Tennessee v. Crane, 843 S.W.2d 14, 20 U.C.C. Rep. Serv. 2d 210 (Tenn. Ct. App. 1992).

5 Gunter v. True, 203 Ga. App. 330, 416 S.E.2d 768, 18 U.C.C. Rep. Serv. 2d 247 (1992).

6 Green Acres Enterprises, Inc. v. Freeman, 876 S.W.2d 636 (Mo. Ct. App. W.D. 1994).

7 Bank of Ravenswood v. Polan, 256 Ill. App. 3d 470, 194 Ill. Dec. 697, 628 N.E.2d 194 (1st Dist. 1993).

8 Fiatallis North America, Inc. v. Hill, 650 A.2d 222, 27 U.C.C. Rep. Serv. 2d 663 (Me. 1994) (decided under pre-1990 version).
Where the accommodation party is a guarantor, such accommodation party is liable in that capacity. National Bank of North America v. Around the Clock Truck Service, Inc., 58 Misc. 2d 660, 296 N.Y.S.2d 606, 5 U.C.C. Rep. Serv. 866 (Sup 1968).

9 Fiatallis North America, Inc. v. Hill, 650 A.2d 222, 27 U.C.C. Rep. Serv. 2d 663 (Me. 1994).

Works.

12 Am. Jur. 2d Bills and Notes § 436

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XI. Liability of Parties

C. Accommodation Parties

4. Guarantor

§ 436. Guaranty agreements

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Bills and Notes 121

A.L.R. Library
Creditor's duty of disclosure to surety or guarantor after inception of suretyship or guaranty, 63 A.L.R.4th 678
Construction and effect of U.C.C. sec. 3-416 governing guaranty contracts, 10 A.L.R.4th 897

The terms of a guaranty agreement must be strictly construed.[1]

A guaranty that is a separate document is not considered a negotiable instrument and does not fall within the scope of the Uniform Commercial Code.[2] Therefore, general contract law applies, rather than the terms of the Code.[3]

A comaker is a party to a contract, while a guarantor is not.[4] A guaranty is a special contract, and the guarantor is not in any sense a party to the note.[5]

Footnotes

1 Vastine v. Bank of Dallas, 808 S.W.2d 463 (Tex. 1991).

2 Federal Deposit Ins. Corp. v. Nobles, 901 F.2d 477, 11 U.C.C. Rep. Serv. 2d 893 (5th Cir. 1990); Transamerica

Commercial Finance Corp. v. Naef, 842 P.2d 539, 21 U.C.C. Rep. Serv. 2d 704 (Wyo. 1992).

[3] Federal Deposit Ins. Corp. v. Nobles, 901 F.2d 477, 11 U.C.C. Rep. Serv. 2d 893 (5th Cir. 1990).
Where guarantors of a corporate note signed a separate guaranty agreement, but did not sign the note itself as guarantors, the guarantors' liability was controlled by general principles of contract and guaranty law. Simpson v. Milne, 677 P.2d 365, 36 U.C.C. Rep. Serv. 1262 (Colo. App. 1983).

[4] Trebelhorn v. Agrawal, 905 N.W.2d 237, 94 U.C.C. Rep. Serv. 2d 241 (Minn. Ct. App. 2017).

[5] D.P. Solutions, Inc. v. Xplore-Tech Services Private Ltd., 211 N.C. App. 632, 710 S.E.2d 297 (2011).

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4. Guarantor

§ 437. Guaranty of payment

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 121

A.L.R. Library

Construction and effect of U.C.C. sec. 3-416 governing guaranty contracts, 10 A.L.R.4th 897

Forms

Forms relating to guaranty of payment, generally, see Am. Jur. Legal Forms 2d, Bills and Notes; Am. Jur. Legal Forms 2d, Uniform Commercial Code; Uniform Commercial Code Legal Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

If the signature of a party to an instrument is accompanied by words indicating that the party guarantees payment or the signer signs the instrument as an accommodation party in some other manner that does not unambiguously indicate an intention to guarantee collection rather than payment, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument in the same circumstances as the accommodated party would be obliged, without prior resort to the accommodated party by the person entitled to enforce the instrument.[1]

Footnotes

[1] U.C.C. § 3-419(e) [2002].

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§ 438. Guaranty of collection

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 121

A.L.R. Library

Construction and effect of U.C.C. sec. 3-416 governing guaranty contracts, 10 A.L.R.4th 897

Treatises and Practice Aids

As to guarantor of collection distinguished, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Forms

Forms relating to guaranteed collection, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [Westlaw®(r) Search Query]

The Uniform Commercial Code contemplates two kinds of guarantors, namely, a guarantor of payment and a guarantor of collectibility. A guarantor of payment engages that if instrument is not paid when due, the guarantor will pay it according to its tenor without resort by holder to any other party, with the result that a guarantor of payment, like a maker, is primarily liable on the instrument.[1] A guarantor of collectibility is secondarily liable on the instrument, because, before the guarantor can be sued by the holder, the holder must first take action against the maker or show that such action would be useless.[2] The distinction between a guaranty of collection and a guaranty of payment is that a guaranty of collection is an undertaking of the guarantor to pay if the debt cannot be collected by the exercise of reasonable diligence, whereas a guaranty of payment is an obligation to pay the debt when due if the debtor fails to pay it.[3]

If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if:

- execution of judgment against the other party has been returned unsatisfied[4]
- the other party is insolvent or in insolvency proceedings[5]
- the other party cannot be served with process[6]
- it is otherwise apparent that payment cannot be obtained from the other party[7]

Footnotes

1 Ligran, Inc. v. Medlawtel, Inc., 86 N.J. 583, 432 A.2d 502, 32 U.C.C. Rep. Serv. 166 (1981); Ferguson v. McCarrell, 588 S.W.2d 895, 27 U.C.C. Rep. Serv. 758 (Tex. 1979).

2 Ligran, Inc. v. Medlawtel, Inc., 86 N.J. 583, 432 A.2d 502, 32 U.C.C. Rep. Serv. 166 (1981).

3 Wolfe v. Schuster, 591 S.W.2d 926, 10 A.L.R.4th 888 (Tex. Civ. App. Dallas 1979).

4 U.C.C. § 3-419(d)(i) [2002].

5 U.C.C. § 3-419(d)(ii) [2002].

6 U.C.C. § 3-419(d)(iii) [2002].

7 U.C.C. § 3-419(d)(iv) [2002].

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XI. Liability of Parties

D. Agents and Representatives or Their Principals

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 54, 61, 123(1) to 123(3), 201, 239, 279, 452(1) to 452(4)

A.L.R. Library

A.L.R. Index, Agency
A.L.R. Index, Bills and Notes
A.L.R. Index, Checks and Drafts
A.L.R. Index, Good Faith
A.L.R. Index, Holder in Due Course
A.L.R. Index, Signatures
A.L.R. Index, Uniform Commercial Code (UCC)
West's A.L.R. Digest, Bills and Notes 54, 61, 123(1) to 123(3), 201, 239, 279, 452(1) to 452(4)

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1. General Principles

§ 439. Agents and representatives or their principals, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 54, 123(1) to 123(3)

A.L.R. Library

Power and authority of president of business corporation to execute commercial paper, 96 A.L.R.2d 549

Personal liability of one who signs or indorses without qualification commercial paper of corporation, 82 A.L.R.2d 424

Authority of agent to indorse and transfer commercial paper, 37 A.L.R.2d 453

Forms

Forms relating to agent authority or power of attorney, generally, see Am. Jur. Legal Forms 2d, Agency; Am. Jur. Legal Forms 2d, Uniform Commercial Code; Uniform Commercial Code Legal Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

A person is not liable on an instrument, unless the person has signed the instrument or the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person.[1] "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.[2] To prove that a defendant is the maker of the note, the plaintiff must present evidence indicating that the defendant's signature appears on the note or that a representative of the defendant signed the note on the

defendant's behalf, and this can be done by introduction of the note in evidence supported by an affidavit of the custodian of records attesting to its authenticity.[3]

Footnotes

1 U.C.C. § 3-401(a) [2002], referring to U.C.C. § 3-402 [2002].
The officer and director of a limited liability company (LLC) distributor was not personally liable to a British documentary filmmaker on the filmmaker's claim to recover its share of monies that the distributor did not turn over from proceeds from distribution and showing of three films it had produced; even though the agreement created an express trust with the filmmaker as beneficiary, the officer did not agree to serve as trustee or personally assume any duties, he was not a party to the agreement, the distributor, not the officer, agreed to hold receipts in trust for the filmmaker, and the officer signed the agreement "for and on behalf" of the distributor. Exhibition on Screen, Ltd. v. Pew, 360 F. Supp. 3d 281 (E.D. Pa. 2018) (applying Pennsylvania law).
A signatory of a dishonored check who failed to indicate on the face of the check that he signed in a representative capacity may escape personal liability where there is an understanding, implicit in the course of dealing between the parties, that he was acting in a representative capacity; however, unless the defendant makes an affirmative demonstration that the taker of the note knew or understood that the signer intended to execute the instrument in a representative status only, there can be no defense that, notwithstanding the form of the note, representative liability was otherwise established between the parties. Finkel v. Romanowicz, 577 F.3d 79, 70 U.C.C. Rep. Serv. 2d 118 (2d Cir. 2009) (applying New York law).

2 U.C.C. § 1-201(33) [2001].

3 Lissiak v. SW Loan OO, L.P., 499 S.W.3d 481 (Tex. App. Tyler 2016).

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1. General Principles

§ 440. Signature by agent

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 54, 123(1) to 123(3)

Forms

Forms relating to signature by authorized representative, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Legal Forms, Article 3 Negotiable Instruments; [Westlaw®(r) Search Query]

If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract.[1] If the represented person is bound, the signature of the representative is the "authorized signature of the represented person" and the represented person is liable on the instrument, whether or not identified in the instrument.[2]

If under the law of agency the represented person would be bound by the act of the representative in signing either the name of the represented person or that of the representative, the signature is the authorized signature of the represented person.[3]

The indorsement of a check may be made by an agent, whose authority may be actual, implied, or apparent.[4]

Comment:

If P, the principal, authorized A, the agent, to borrow money on P's behalf and signed A's name to a note without disclosing that the signature was on behalf of P, A is liable on the instrument. But if the person entitled to enforce the note can also prove that P authorized A to sign on P's behalf, why shouldn't P also be liable on the instrument? To recognize the liability of P takes nothing away from the utility of negotiable instruments. Furthermore, imposing liability on P has the merit of making it impossible to have an instrument on which nobody is liable, even though it was authorized by P. That result could occur under former § 3-401(1) if an authorized agent signed "as agent" by the note did not identify the principal. If the dispute was between the agent and the payee of the note, the agent could escape liability on the note by proving that the agent and the payee did not intend that the agent be liable on the note when the note was issued. Under the prevailing interpretation of former § 3-401(1), the principal was not liable on the note because the principal's name did not appear on the note. Thus, nobody was liable on the note, even though all parties knew that the note was signed by the agent on behalf of the principal. Under present § 3-402(a), the principal would be liable on the note.[5]

Principals are liable on negotiable instruments when the principal's agent, acting as an agent, signs the instrument and has common-law authority to do so.[6]

Footnotes

1 U.C.C. § 3-402(a) [2002].

2 U.C.C. § 3-402(a) [2002].
The alleged subjective belief of the individual named as the payee on a promissory note, that the underlying loan was one that was made by his company, rather than by himself personally, to the corporation that was owned by the individual that signed the note as the borrower, could not contradict the note's express terms, which indicated that the loan was between the two individuals, though the loan proceeds were allegedly deposited into the corporate account, and though the corporation, rather individual named as borrower, made all payments on the note from the corporate account, especially where the corporation's weekly payments were made, in a manner consistent with the note's terms, to the individual listed as payee and not to his company. Williams v. Houston Plants & Garden World, Inc., 508 B.R. 19 (S.D. Tex. 2014).
A used car retailer was the drawer and signer of a dishonored check, as required to bind the retailer, in the bank's action against the retailer for violations of drawer and signer requirements, where the retailer admitted in its answer that the check was signed by an authorized representative of the retailer. Consumer Solutions Financial Services, Inc. v. Heritage Bank, 300 Ga. App. 272, 684 S.E.2d 682, 70 U.C.C. Rep. Serv. 2d 21 (2009).

3 U.C.C. § 3-402 [2002] Official Comment 1.

4 Keane v. Pan Am. Bank, 309 So. 2d 579, 16 U.C.C. Rep. Serv. 1054 (Fla. 2d DCA 1975); Bank South, N.A. v. Midstates Group, Inc., 185 Ga. App. 342, 364 S.E.2d 58, 5 U.C.C. Rep. Serv. 2d 634 (1987).

5 U.C.C. § 3-402 [2002] Official Comment 1.

6 Soults Farms, Inc. v. Schafer, 797 N.W.2d 92, 74 U.C.C. Rep. Serv. 2d 619 (Iowa 2011).

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XI. Liability of Parties

D. Agents and Representatives or Their Principals

1. General Principles

§ 441. Unauthorized signature

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 123(1)

Forms

Forms relating to unauthorized signatures and signing without authority, generally, see Am. Jur. Legal Forms 2d, Uniform Commercial Code; Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Legal Forms, Article 3 Negotiable Instruments; Uniform Commercial Code Pleading and Practice Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

Unless otherwise provided, an unauthorized signature is ineffective, except as the signature of the unauthorized signer in favor of a person who, in good faith, pays the instrument or takes it for value.[1] An "unauthorized signature" is one made without actual, implied, or apparent authority, and includes a forgery.[2]

The "except" clause of the first sentence states the generally accepted rule that the unauthorized signature, while it is wholly inoperative as that of the person whose name is signed, is effective to impose liability upon the signer or to transfer any rights that the signer may have in the instrument.[3] The signer's liability is not in damages for breach of warranty of authority, but is full liability on the instrument in the capacity in which the signer signed.[4] It is, however, limited to parties who take or pay the instrument in good faith so that one who knows that the signature is unauthorized cannot recover from the signer on the instrument.[5]

Footnotes

[1] U.C.C. § 3-403(a) [2002].
The lender did not take a note renewing an original loan to the borrower, a limited liability company (LLC), in good faith, within the meaning of the statute providing that "unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value," where the signatory testified that he had never been a member of the LLC borrower or affiliated with the borrower in any capacity, the borrower's owner also testified that the signatory had no affiliation with the borrower, and the lender had information in its possession confirming the owner as the borrower's sole owner and that the signatory had no involvement with the borrower. Davison v. Citizens Bank & Trust Company, 338 Ga. App. 671, 791 S.E.2d 437, 90 U.C.C. Rep. Serv. 2d 741 (2016).

[2] U.C.C. § 1-201(41) [2001].

[3] U.C.C. § 3-403 [2002] Official Comment 2.

[4] U.C.C. § 3-403 [2002] Official Comment 2.

[5] U.C.C. § 3-403 [2002] Official Comment 2.

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1. General Principles

§ 442. Liability of unauthorized signer

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 279

A.L.R. Library

Discharge of debtor who makes payment by delivering check payable to creditor to latter's agent, where agent forges creditor's signature and absconds with proceeds, 49 A.L.R.3d 843

Treatises and Practice Aids

As to liability of unauthorized signer, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Forms

Forms relating to liability of party signing, see Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Pleading and Practice Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

The civil or criminal liability of a person who makes an unauthorized signature is not affected by any provision of Article 3, which makes the unauthorized signature effective for purposes of the chapter.[1] The unauthorized signature is treated as the signature of the unauthorized signer with respect to a person who has paid the instrument in good faith or who has taken the instrument for value. Thus, the unauthorized signer is liable in the capacity in which the unauthorized signer signed, that is, as maker, acceptor, drawer, or indorser. As against any other kind of holder or transferee, the unauthorized signer is not personally liable on the instrument. The liability of the unauthorized signer is for payment of the face of the instrument as distinguished from liability for breach of a warranty.[2]

If the unauthorized signing constitutes a forgery, the criminal liability of the signer is not affected by the represented person's ratification of the signature.[3] Likewise, Revised Article 3 does not affect any civil liability to which the unauthorized signer is subject apart from the instrument.[4]

Footnotes

1 U.C.C. § 3-403(c) [2002].

2 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-403:13 [Rev.] (3d ed.).

3 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-403:13 [Rev.] (3d ed.).
As to the ratification of an unauthorized signature, see § 443.

4 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-403:13 [Rev.] (3d ed.).

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XI. Liability of Parties

D. Agents and Representatives or Their Principals

1. General Principles

§ 443. Ratification

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 61

A.L.R. Library

What constitutes ratification of unauthorized signature under U.C.C. sec. 3-404, 93 A.L.R.3d 967

Trial Strategy

Ratification of Forged or Unauthorized Signature, 7 Am. Jur. Proof of Facts 2d 675§§ 6 to 15 (Proof of ratification of forged signature)

Forms

Forms relating to ratification of alteration, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

Forms relating to ratification, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Pleading and Practice Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

An unauthorized signature may be ratified for all purposes of Article 3.[1] Although the forger is not an agent, ratification is governed by the rules and principles applicable to ratification of unauthorized acts of an agent.[2]

Ratification is a retroactive adoption of the unauthorized signature by the person whose name is signed and may be found from conduct as well as from express statements.[3] Such conduct includes paying on the drafts,[4] a history of previous indorsements,[5] and the retention of benefits in the transaction with knowledge of the unauthorized signature.[6]

Ratification may preclude a finding of liability against the depositary bank for mishandling a check.[7] Although the ratification may relieve the signer of liability on the instrument, it does not of itself relieve the signer of liability to the person whose name is signed.[8]

Ratification does not in any way affect the criminal law.[9] While ratification may be taken into account with other relevant facts in determining punishment, it does not relieve the signer of criminal liability.[10]

Footnotes

1 U.C.C. § 3-403(a) [2002].

2 U.C.C. § 3-403 [2002] Official Comment 3.

3 U.C.C. § 3-403 [2002] Official Comment 3.

4 Universal Premium Acceptance Corp. v. York Bank & Trust Co., 866 F. Supp. 182, 25 U.C.C. Rep. Serv. 2d 17 (E.D. Pa. 1994), judgment rev'd on other grounds, 69 F.3d 695, 28 U.C.C. Rep. Serv. 2d 1 (3d Cir. 1995).
Even though only the first of a trust's two trustees signed a promissory note for a bank loan, the note was valid, because under Massachusetts law one trustee can act on behalf of the trust if such trustee's actions are ratified by the other trustee where the second trustee clearly knew about the note, permitted it to remain outstanding, and did not object to the first trustee's making payments on it; while the second trustee did not sign the note as a maker, he did sign it in the capacity of a guarantor, executed a real estate mortgage to secure the note, and signed a separate guaranty, thus, ratifying the note. Sterling Bank v. Bingham, 24 U.C.C. Rep. Serv. 2d 147 (Mass. Super. Ct. 1994).

5 Grand Western Currency Exchange, Inc. v. A:M Sunrise Const. Co., 163 Ill. App. 3d 51, 114 Ill. Dec. 331, 516 N.E.2d 486, 5 U.C.C. Rep. Serv. 2d 628 (1st Dist. 1987) (holding that the five prior occasions constituted ratification of X's apparent authority to indorse the company's checks).

6 U.C.C. § 3-403 [2002] Official Comment 3.
In an action brought by a seed company against a limited liability company (LLC) and its principal, alleging breach of contract, breach of implied-in-fact contract, and unjust enrichment, the district court did not clearly err in finding that the principal did not ratify the promissory note by his words or actions after the note was delivered to the company, where the court credited the principal's testimony that he did not know that seed from the company had been planted on the farming partnership's land instead of seed he had purchased from another company, and there was no evidence that the principal personally received or planted seed from the plaintiff company. Stine Seed Company v. A & W Agribusiness, LLC, 862 F.3d 1094, 98 Fed. R. Serv. 3d 336 (8th Cir. 2017) (applying Iowa law).

7 Citibanc of Alabama/Fultondale v. Tricor Energies, Inc., 493 So. 2d 1344, 1 U.C.C. Rep. Serv. 2d 1571 (Ala. 1986).

8 U.C.C. § 3-403 [2002] Official Comment 3.

9 U.C.C. § 3-403 [2000] Official Comment 3, providing further that no policy of the criminal law prevents a person whose name is forged to assume liability to others on the instrument by ratifying the forgery, but the ratification cannot affect the rights of the state.

[10] U.C.C. § 3-403 [2002] Official Comment 3.

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XI. Liability of Parties

D. Agents and Representatives or Their Principals

1. General Principles

§ 444. Required multiple signing

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 123(3)

If the signature of more than one person is required to constitute the authorized signature of an organization, the signature of the organization is unauthorized if one of the required signatures is lacking.[1] An "organization" means a person other than an individual.[2] Because the definition of "organization" is so broad, it applies when a husband and wife are both required to sign an instrument.[3]

This section clarifies the meaning of "unauthorized" in cases in which an instrument contains less than all of the signatures that are required as authority to pay a check. Judicial authority was split on the issue of whether the one-year notice period, under former § 4-406(4) (now § 4-406(f)), barred a customer's suit against a payor bank that paid a check containing less than all of the signatures required by the customer to authorize payment of the check.[4] Some cases took the view that if a customer required that a check contain the signatures of both A and B to authorize payment and only A signed, there was no unauthorized signature within the meaning of that term in former § 4-406(4) because A's signature was neither unauthorized nor forged.[5] The other cases correctly pointed out that it was the customer's signature at issue and not that of A; hence, the customer's signature was unauthorized if all signatures required to authorize payment of the check were not on the check. The current provision follows the latter line of cases. The same analysis applies if A forged the signature of B. Because the forgery is not effective as a signature of B, the required signature of B is lacking.[6]

Footnotes

1 U.C.C. § 3-403(b) [2002].

2 U.C.C. § 1-201(25) [2001].

[3] U.C.C. § 3-403 [2002] Official Comment 4.

[4] U.C.C. § 3-403 [2002] Official Comment 4.

[5] U.C.C. § 3-403 [2002] Official Comment 4.

[6] U.C.C. § 3-403 [2002] Official Comment 4.

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Bills and Notes

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XI. Liability of Parties

D. Agents and Representatives or Their Principals

1. General Principles

§ 445. Named representative; identified principal

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 123(3)

A.L.R. Library

Power and authority of president of business corporation to execute commercial paper, 96 A.L.R.2d 549

Authority of agent to indorse and transfer commercial paper, 37 A.L.R.2d 453

Forms

Forms relating to signed by agent or representative, see Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Pleading and Practice Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

If a representative signs the name of the representative to an instrument and the signature is an authorized signature of the represented person, then if the form of the signature shows unambiguously that the signature is made on behalf of the represented person who is identified in the instrument, the representative is not liable on the instrument.[1] This section provides that if the form of the signature unambiguously shows that it is made on behalf of an identified represented person (for example, "P, by A, Treasurer"), the agent is not liable.[2] It creates a workable standard for a court to apply.[3]

Caution:

The rule that if a signer both identifies the principal on whose behalf the signer is signing and discloses the representative capacity in which the signer is signing, the signature creates no personal liability in the signer does not apply when the representatives sign instruments stating that they "personally guarantee payment" thereunder, because the statute does not contemplate or provide for such an intervening factor.[4] Accordingly, where a corporate secretary-treasurer signed, in his corporate capacity, a note bearing the notation "the undersigned do hereby personally guarantee the payment of this note," he assumed personal liability therefor. To hold otherwise would anomalously make the corporation that is principally liable on the note the "undersigned" for purposes of the guarantee.[5]

Footnotes

1 U.C.C. § 3-402(b)(1) [2002].

2 U.C.C. § 3-402 [2002] Official Comment 2.

3 U.C.C. § 3-402 [2002] Official Comment 2.

4 Threlkel v. Shenanigan's, Inc., 110 Nev. 1088, 881 P.2d 674, 27 U.C.C. Rep. Serv. 2d 176 (1994) (decided under pre-1990 version, but stating that the revision of Article 3 does not change this result).

5 Threlkel v. Shenanigan's, Inc., 110 Nev. 1088, 881 P.2d 674, 27 U.C.C. Rep. Serv. 2d 176 (1994).

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XI. Liability of Parties

D. Agents and Representatives or Their Principals

1. General Principles

§ 446. Absence of representative capacity or identification of principal

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 123(1) to 123(3)

A.L.R. Library

Construction and application of U.C.C. sec. 3-403(2) dealing with personal liability of authorized representative who signs negotiable instrument in his own name, 97 A.L.R.3d 798

Personal liability of one who signs or indorses without qualification commercial paper of corporation, 82 A.L.R.2d 424

Except as otherwise provided, if the form of the signature does not show unambiguously that the signature is made in a representative capacity, or if the represented person is not identified in the instrument, the representative is liable on the instrument to a holder in due course that took the instrument without notice that the representative was not intended to be liable on the instrument.[1] For example, a restaurant employee was personally liable on a promissory note executed to pay for extra work performed by a contractor during renovation of a restaurant, where the note did not name the restaurant owner as a party represented or indicate that the employee was signing in a representative capacity.[2]

With respect to any other person, the representative is liable on the instrument, unless the representative proves that the original parties did not intend the representative to be liable on the instrument.[3] If the original parties to the note did not intend that the representative also be liable, imposing liability on the representative is a windfall to the person enforcing the note. Although the representative is prima facie liable because the representative's signature appears on the note and the form of the signature does not unambiguously refute personal liability, the representative can escape liability by proving that the original parties did not intend that the representative be liable on the note. This provision is a change from former § 3-403(2)(a).[4]

Where a promissory note is not a negotiable instrument under the Uniform Commercial Code, the liability of the signer of such a note is not controlled by Code provisions governing the personal liability of an agent who signs on behalf of a principal or corporation.[5] Thus, the U.C.C. did not govern the court's determination of whether the defendant, who did not sign the contract as an agent or as a corporate officer, executed the contract in an individual capacity, since the contract wherein the defendant agreed to return the plaintiff/joint venture's capital contribution was not a negotiable instrument as it was not payable to order or to bearer.[6]

Any finding of liability is subject to an additional exception that the representative is not liable if the representative signed the representative's name on a personalized check identifying the account of the represented person.[7] The section expands, rather than contracts, the representative's defenses.[8]

Footnotes

1 U.C.C. § 3-402(b)(2) [2002], referring to U.C.C. § 3-402(c) [2002].

2 Formica Const. Co., Inc. v. Mills, 9 Misc. 3d 398, 801 N.Y.S.2d 713, 58 U.C.C. Rep. Serv. 2d 605 (N.Y. City Civ. Ct. 2005).

3 U.C.C. § 3-402(b)(2) [2002].

4 U.C.C. § 3-402 [2002] Official Comment 2.

5 Central States, Southeast and Southwest Areas, Health and Welfare Fund v. Pitman, 66 Ill. App. 3d 300, 23 Ill. Dec. 26, 383 N.E.2d 793 (3d Dist. 1978); First Nat. Bank of Findlay v. Fulk, 57 Ohio App. 3d 44, 566 N.E.2d 1270, 13 U.C.C. Rep. Serv. 2d 1134 (3d Dist. Hancock County 1989).

6 Stroll v. Epstein, 818 F. Supp. 640 (S.D. N.Y. 1993), aff'd, 9 F.3d 1537 (2d Cir. 1993).

7 Cohen v. Disner, 36 Cal. App. 4th 855, 42 Cal. Rptr. 2d 782, 27 U.C.C. Rep. Serv. 2d 540 (2d Dist. 1995) (referring to U.C.C. § 3-402(b)(2), (c)).
As to the exception that the representative is not liable if the representative signed the representative's name on a personalized check identifying the account of the represented person, see § 448.

8 Cohen v. Disner, 36 Cal. App. 4th 855, 42 Cal. Rptr. 2d 782, 27 U.C.C. Rep. Serv. 2d 540 (2d Dist. 1995).

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XI. Liability of Parties

D. Agents and Representatives or Their Principals

1. General Principles

§ 447. Absence of representative capacity or identification of principal—Ambiguous signatures; construction

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 123(1) to 123(3)

Forms

Forms relating to complaints against partners, generally, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

There are many ways in which there can be ambiguity about a signature.[1] For example, in each case John Doe is the authorized agent of Richard Roe and John Doe signs a note on behalf of Richard Roe. In each case the intention of the original parties to the instrument is that Roe is to be liable on the instrument but Doe is not to be liable. Case No. 1. Doe signs "John Doe" without indicating in the note that Doe is signing as agent. The note does not identify Richard Roe as the represented person. Case No. 2. Doe signs "John Doe, Agent" but the note does not identify Richard Roe as the represented person. Case No. 3. The name "Richard Roe" is written on the note and immediately below that name Doe signs "John Doe" without indicating that Doe signed as agent. In each case Doe is liable on the instrument to a holder in due course without notice that Doe was not intended to be liable. In none of the cases does Doe's signature unambiguously show that Doe was signing as agent for an identified principal. A holder in due course should be able to resolve any ambiguity against Doe.[2]

In determining whether the instrument indicates the capacity of the signer, the instrument must be considered in its entirety.[3] Thus, where the name of the corporation appears on the note side of the instrument, but not on the guarantee side, the president of the corporation is considered to have signed the guarantee in a personal capacity.[4] Likewise, where the representative signs the note personally and only the representative's name appears on the note as obligor, the representative

is the sole obligor on the note.[5]

Footnotes

1 U.C.C. § 3-402 [2002] Official Comment 2.

2 U.C.C. § 3-402 [2002] Official Comment 2.

3 F.D.I.C. v. Trans Pacific Industries, Inc., 14 F.3d 10, 22 U.C.C. Rep. Serv. 2d 1074 (5th Cir. 1994); F.D.I.C. v. Woodside Const., Inc., 979 F.2d 172, 21 U.C.C. Rep. Serv. 2d 64 (9th Cir. 1992); Schaffer v. First Merit Bank, N.A., 186 Ohio App. 3d 173, 2009-Ohio-6146, 927 N.E.2d 15 (9th Dist. Lorain County 2009); Gant Oil Co., Inc. v. Ace Oil Co., a Div. of Ace Enterprises, Inc., 884 S.W.2d 131, 25 U.C.C. Rep. Serv. 2d 442 (Tenn. Ct. App. 1994).

4 First State Bank of Miami v. Eisdorfer, 399 So. 2d 414 (Fla. 3d DCA 1981); Homer Nat. Bank v. Springlake Farms, Inc., 616 So. 2d 255 (La. Ct. App. 2d Cir. 1993).

5 Bluffestone v. Abrahams, 125 Ariz. 42, 607 P.2d 25, 27 U.C.C. Rep. Serv. 1349 (Ct. App. Div. 2 1979); Simmons v. Compania Financiera Libano, S.A., 830 S.W.2d 789 (Tex. App. Houston 1st Dist. 1992), writ denied, (Oct. 14, 1992) (decided under pre-1990 U.C.C.).

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XI. Liability of Parties

D. Agents and Representatives or Their Principals

1. General Principles

§ 448. Check payable from account of represented person

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 123(1)

If a representative signs the name of the representative as the drawer of a check without indication of the representative status and the check is payable from an account of the represented person who is identified on the check, the signer is not liable on the check if the signature is an authorized signature of the represented person.[1] This statute is directed at check cases[2] and it expands rather than contracts the representative's defenses.[3] It states that if the check identifies the represented person, the agent who signs on the signature line does not have to indicate agency status. Virtually all checks used today are in personalized form, which identify the person on whose account the check is drawn. In this case, nobody is deceived into thinking that the person signing the check is meant to be liable. This subsection is meant to overrule cases decided under former Article 3 of the Uniform Commercial Code.[4]

Footnotes

1 U.C.C. § 3-402(c) [2002].

2 U.C.C. § 3-402 [2002] Official Comment 3.

3 Cohen v. Disner, 36 Cal. App. 4th 855, 42 Cal. Rptr. 2d 782, 27 U.C.C. Rep. Serv. 2d 540 (2d Dist. 1995).
As to the liability of corporate officials for issuing checks with insufficient funds, see Am. Jur. 2d, Corporations § 1614.

4 U.C.C. § 3-402 [2002] Official Comment 3.

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XI. Liability of Parties

D. Agents and Representatives or Their Principals

1. General Principles

§ 449. Officer of organization

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 123(2)

A.L.R. Library

Power and authority of president of business corporation to execute commercial paper, 96 A.L.R.2d 549

Personal liability of one who signs or indorses without qualification commercial paper of corporation, 82 A.L.R.2d 424

Trial Strategy

Proof of Personal Liability of Corporate Officer on Promissory Note, 150 Am. Jur. Proof of Facts 3d 93

Forms

Forms relating to corporations, generally, see Am. Jur. Legal Forms 2d, Bills and Notes [Westlaw®(r) Search Query]

The signature of a corporate officer on a check drawn on a corporate account indicates that the obligation on the check will be borne by the corporation, rather than by the officer in the officer's individual capacity.[1] The usual business practice is to bind a corporation with the signature of an officer authorized by the corporation to sign on its behalf.[2]

Moreover, an instrument may disclose on its face that the signature was executed only in a representative capacity, even though the particular office or position of the signer is not disclosed thereon.[3] In the absence of a contrary manifestation in the document, the following signatures and descriptions, among others, create an inference that the principal and not the agent is a party: the principal's name, followed by the agent's name, preceded by a preposition, such as "by" or "per."[4]

In one instance, promissory notes listing the name of the organization followed or proceeded by the treasurer's name and his office, designated as "Secretary or Secty-Treas" were signed in a representative capacity.[5] However, the signer of a promissory note was, as a matter of law, liable in an individual capacity for the balance due on the note where (1) the note was signed by the individual, below the typewritten name and address of the company, but the individual's office was not disclosed on the face of the note; (2) the wording of the note, "we promise to pay," affirmatively showed that payment was promised from more than one source; and (3) the individual offered no evidence to rebut his apparent status of individual signer as shown by the face of the note, and the obligee presented evidence that the individual had represented that he would stand by the note.[6]

Footnotes

1 Gant Oil Co., Inc. v. Ace Oil Co., a Div. of Ace Enterprises, Inc., 884 S.W.2d 131, 25 U.C.C. Rep. Serv. 2d 442 (Tenn. Ct. App. 1994).

2 F.D.I.C. v. Trans Pacific Industries, Inc., 14 F.3d 10, 22 U.C.C. Rep. Serv. 2d 1074 (5th Cir. 1994); Central Illinois Public Service Co. v. Molinarolo, 223 Ill. App. 3d 471, 165 Ill. Dec. 803, 585 N.E.2d 199 (5th Dist. 1992).
A secretary-treasurer of the defendant corporation could not be held personally liable on two corporate checks that she signed, even though her signature on the checks did not specifically indicate that she was signing in her representative capacity, where the checks in question were printed with the name of the corporation in the place where the owner of an account is usually designated, the person represented, that is, the corporation, was named on the instruments, and there was no expectation by the parties that the secretary-treasurer was personally assuming liability on the checks when she signed them, as demonstrated by the testimony of the payee's president who asserted that there was no understanding between himself and the secretary-treasurer that she would be personally liable on the checks, nor that she, rather than the corporation, would be billed. Gant Oil Co., Inc. v. Ace Oil Co., a Div. of Ace Enterprises, Inc., 884 S.W.2d 131, 25 U.C.C. Rep. Serv. 2d 442 (Tenn. Ct. App. 1994).

3 Dollar Dry Dock Bank v. Alexander, 197 A.D.2d 662, 602 N.Y.S.2d 885 (2d Dep't 1993).

4 Chidakel v. Blonder, 431 A.2d 594, 31 U.C.C. Rep. Serv. 1642 (D.C. 1981); Federal Deposit Ins. Corp. v. K-D Leasing Co., 743 S.W.2d 774, 6 U.C.C. Rep. Serv. 2d 156 (Tex. App. El Paso 1988).

5 Mestco Distributors, Inc. v. Stamps, 824 S.W.2d 678, 17 U.C.C. Rep. Serv. 2d 174 (Tex. App. Houston 14th Dist. 1992).

6 A. Duda & Sons, Inc. v. Madera, 687 S.W.2d 83 (Tex. App. Houston 1st Dist. 1985).
The signature "TPI, W.K. Robbins, Jr.," without more, would normally bind the individual; however, the face of the entire instrument had to be considered, and, in the context of business expectations, it was abundantly clear that TPI was the sole borrower and maker of the subject notes and that the individual signed in a representative capacity only, where the individual was TPI's board chairman, TPI was the only entity listed in the upper left-hand identification block of the subject notes, the individual's name was typed and signed below the typewritten name of the corporation in the bottom right corner, and the holder secured a judgment against the corporation on the notes; moreover, lenders commonly require a personal guarantee from an individual corporate officer of a closely held corporation before lending to the officer's corporation; in that event, the practice is for the corporate officer to sign twice as maker, once for the corporation and once for the officer, or to execute a guaranty of the loan; neither was done in the case at bar. F.D.I.C. v. Trans Pacific Industries, Inc., 14 F.3d 10, 22 U.C.C. Rep. Serv. 2d 1074 (5th Cir. 1994).

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XI. Liability of Parties

D. Agents and Representatives or Their Principals

1. General Principles

§ 450. Partners and partnership

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 123(1), 123(2)

Forms

Forms relating to defense for partners, generally, see Am. Jur. Pleading and Practice Forms, Bills and Notes [Westlaw®(r): Search Query]

Forms relating to partners or partnerships, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Pleading and Practice Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

As a general rule, where only one of the members of a partnership signs their name to a promissory note, neither the firm nor any of the other partners is liable on the note, unless the firm has no name or is doing business under the name of the partner who signs the note; this rule is applicable regardless of whether the note is or is not, in fact, made for a firm debt or for the benefit of the partnership.[1] However, a nonsigning partner would be liable on the subject notes if they were signed by another partner in a representative capacity and as partnership obligations.[2] Thus, for example, where the partners guaranteed payment of partnership debts, and a lender, relying on the guarantee, made a loan to the partnership which was not repaid, and where the debt was evidenced by a note which was signed by only one partner and did not include the name of the partnership, the creditor could recover on the guarantee agreement, notwithstanding the signature of the partnership did not appear on the note, if the lender could prove that the loan was made to the partnership, that the signing partner was acting on behalf of the partnership in procuring the loan and was authorized to do so or that the partners, with knowledge of the transaction, thereafter ratified the acts of the signing partner.[3]

Having privately agreed that his partner Y would not be personally liable on the debt, X alone signed a real estate note as "X, Partner." While the note contained no other reference to the partnership, all other documents executed at the closing did.

When the partnership defaulted, the seller sued. Y claimed he was not liable because of his agreement with X. Since the seller did not know about X's agreement, Y would be liable if the note was signed "in the partnership name." The "X, Partner" signature was ambiguous enough to allow consideration of the other closing documents, and since they referenced the partnership, Y was liable for half of the debt represented by the note.[4]

Footnotes

1 Anderson v. Badger, 693 S.W.2d 645, 42 U.C.C. Rep. Serv. 231 (Tex. App. Dallas 1985), writ refused n.r.e., (Jan. 29, 1986).

2 Womack v. First Nat. Bank of San Augustine, 613 S.W.2d 548, 31 U.C.C. Rep. Serv. 1029 (Tex. Civ. App. Tyler 1981).

3 North Carolina Nat. Bank v. Wallens, 31 N.C. App. 721, 230 S.E.2d 690, 21 U.C.C. Rep. Serv. 165 (1976).
As to the ratification of an unauthorized signature, see § 443.

4 Edward A. Kemmler Memorial Found. v. 691/733 East Dublin-Granville Road Co., 62 Ohio St. 3d 494, 584 N.E.2d 695, 17 U.C.C. Rep. Serv. 2d 489 (1992).

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XI. Liability of Parties

D. Agents and Representatives or Their Principals

1. General Principles

§ 451. Parol evidence

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 123(1)

A.L.R. Library

Construction and application of U.C.C. sec. 3-403(2) dealing with personal liability of authorized representative who signs negotiable instrument in his own name, 97 A.L.R.3d 798

Trial Strategy

Proof of Personal Liability of Corporate Officer on Promissory Note, 150 Am. Jur. Proof of Facts 3d 93

Parol evidence is admissible in those cases in which an ambiguity is found on the face of the instrument regarding the capacity in which the person had signed.[1] Thus, if the name of a person represented appears on a note, but the signature does not show that the agent signed in a representative capacity, parol evidence will be allowed to establish that the agent signed in a representative capacity.[2]

Where an ambiguity exists whether a person signed a promissory note in the person's individual or in a representative capacity, parol evidence may be introduced only if the action is between the immediate parties to the note and there is some indication of a principal-agent relationship or that the signer signed in a representative capacity.[3] Parol evidence is not

allowed to show the intent of signing for the purposes of relieving the agent from personal liability when litigation does not involve the immediate parties,[4] such as in an action by an assignee of a note against its maker[5] or in an action where the plaintiff is not the original lender but is a subsequent holder of the note.[6]

Where the instrument itself contains nothing to indicate that it was signed in a representative capacity, parol evidence cannot be introduced to show that such was, in fact, the intent of the signer.[7]

In certain circumstances, the facts may indicate a course of dealing between two parties inferring that the representative capacity of the signer was mutually understood.[8] In such cases, extrinsic evidence of the course of dealing may be used to determine the capacity of the signer.[9]

Footnotes

1 Tampa Bay Economic Development Corp. v. Edman, 598 So. 2d 172, 19 U.C.C. Rep. Serv. 2d 198 (Fla. 2d DCA 1992); Kroll v. Crest Plastics, Inc., 142 Mich. App. 284, 369 N.W.2d 487, 41 U.C.C. Rep. Serv. 1339 (1985).
An individual who was identified numerous times as the "maker" of promissory notes that he signed to obtain financing for his limited liability company (LLC), and who affixed his signature to the notes with no indication that he was signing in a representative capacity, was personally liable as the "maker" of the notes; no ambiguity existed as to the capacity in which the individual had signed the notes, of the kind sufficient to permit introduction of parol evidence on the issue, though the company's name also appeared in the signature block on the notes, and though the individual, after apparently signing the notes as "maker," also executed guarantees. In re Bedrock Marketing, LLC, 404 B.R. 929, 79 Fed. R. Evid. Serv. 597, 68 U.C.C. Rep. Serv. 2d 694 (Bankr. D. Utah 2009) (applying Utah law).

2 Citibank Eastern, N. A. v. Minbiole, 50 A.D.2d 1052, 377 N.Y.S.2d 727, 18 U.C.C. Rep. Serv. 1008 (3d Dep't 1975).

3 Nuttall v. Jesonis, 666 So. 2d 243, 28 U.C.C. Rep. Serv. 2d 909 (Fla. 2d DCA 1996); Gant Oil Co., Inc. v. Ace Oil Co., a Div. of Ace Enterprises, Inc., 884 S.W.2d 131, 25 U.C.C. Rep. Serv. 2d 442 (Tenn. Ct. App. 1994).

4 First Nat. Bank in Alamosa v. Ford Motor Credit Co., 748 F. Supp. 1464, 13 U.C.C. Rep. Serv. 2d 810 (D. Colo. 1990).

5 Empire of America Federal Sav. Bank v. Brady, 776 F. Supp. 1571, 17 U.C.C. Rep. Serv. 2d 1191 (S.D. Fla. 1991).

6 Mountain America Credit Union v. McClellan, 854 P.2d 590, 22 U.C.C. Rep. Serv. 2d 810 (Utah Ct. App. 1993).

7 Attkisson v. Cavanagh, 201 Ga. App. 633, 411 S.E.2d 786, 16 U.C.C. Rep. Serv. 2d 1111 (1991); S & S Cash Register and Computer Co., Inc. v. Caldarera, 627 So. 2d 255 (La. Ct. App. 5th Cir. 1993).
Parol evidence was inadmissible to establish the intent of the parties where the language in the note which stated that "[f]or value received, the undersigned jointly and severally promise to pay" established that more than one person or entity was to be liable on the note. This language taken together with the fact that the signature block did not contain any reference to the corporation made it clear that the individuals who signed the note were to be personally obligated. Tampa Bay Economic Development Corp. v. Edman, 598 So. 2d 172, 19 U.C.C. Rep. Serv. 2d 198 (Fla. 2d DCA 1992).

8 In re Golden Distributors, Ltd., 134 B.R. 770, 17 U.C.C. Rep. Serv. 2d 168 (Bankr. S.D. N.Y. 1991); Mestco Distributors, Inc. v. Stamps, 824 S.W.2d 678, 17 U.C.C. Rep. Serv. 2d 174 (Tex. App. Houston 14th Dist. 1992).

9 Combine Intern. v. Berkley, 141 A.D.2d 465, 529 N.Y.S.2d 790, 8 U.C.C. Rep. Serv. 2d 64 (1st Dep't 1988).

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XI. Liability of Parties

D. Agents and Representatives or Their Principals

2. Employers

§ 452. Employer's responsibility for fraudulent indorsement by employee

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 123(1), 123(2), 201, 239, 279, 452(1) to 452(4)

Trial Strategy

Bank's Failure to Use Ordinary Care in Detecting Forged or Altered Checks, 13 Am. Jur. Proof of Facts 2d 347

Forms

Forms relating to employer and employee, generally, see Am. Jur. Pleading and Practice Forms, Banks [Westlaw®(r) Search Query]

For the purpose of determining the rights and liabilities of a person who, in good faith, pays an instrument or takes it for value or for collection, if an employer entrusted an employee with responsibility with respect to the instrument and the employee or a person acting in concert with the employee makes a fraudulent indorsement of the instrument, the indorsement is effective as the indorsement of the person to whom the instrument is payable if it is made in the name of the person.[1]

Definitions:

The term "employee" includes an independent contractor retained by the employer and also an employee of an independent contractor retained by the employer.[2] The phrase "fraudulent indorsement," as used in this statute, means:

(1) in the case of an instrument payable to the employer, a forged indorsement purporting to be that of the employer;[3] or
(2) in the case of an instrument with respect to which the employer is the issuer, a forged indorsement purporting to be that of the person identified as the payee.[4]

The statute governing an employer's responsibility for fraudulent indorsement by an employee, which is also called the "imposter" rule or the "padded payroll" rule, is one of several comparative negligence provisions and represents a policy decision to place certain losses on the employer.[5] The "fictitious payee" or "padded payroll" rule is not limited to forged endorsements; it plainly covers situations where the employee starts the wheels of normal business procedure in motion to produce a check for a nonauthorized transaction.[6]

The statute is inapplicable where there is no forged indorsement.[7] Thus, the fictitious payee rule that an indorsement by any person in the name of a named payee is effective, if an agent or employee of the maker or drawer has supplied the maker or drawer with the name of the payee intending the latter to have no interest, did not apply to checks made payable to a depositary bank and presented by the drawers' accountant for payment to his account as part of a fraudulent scheme; the checks contained no forged indorsements, and any indorsement by the bank was genuine.[8]

An indorsement is made in the name of a person to whom an instrument is payable if it is made in a name substantially similar to the name of that person, or[9] the instrument, whether or not indorsed, is deposited in a depository bank to an account in a name substantially similar to the name of that person.[10]

This statute is addressed to fraudulent indorsements made by an employee with respect to instruments with respect to which the employer has given responsibility to the employee. It covers two categories of fraudulent indorsements: indorsements made in the name of the employer to instruments payable to the employer, and indorsements made in the name of payees of instruments issued by the employer. This section applies to instruments generally but normally the instrument will be a check.[11] This statute adopts the principle that the risk of loss for fraudulent indorsements by employees who are entrusted with responsibility with respect to checks should fall on the employer rather than the bank that takes the check or pays it, if the bank was not negligent in the transaction. It is based on the belief that the employer is in a far better position to avoid the loss by care in choosing employees, in supervising them, and in adopting other measures to prevent forged indorsements on instruments payable to the employer or fraud in the issuance of instruments in the name of the employer.[12]

If the bank fails to exercise ordinary care, the statute allows the employer to shift loss to the bank to the extent the bank's failure to exercise ordinary care contributed to the loss.[13] The provision applies regardless of whether the employer is negligent.[14]

The statute governing rights and liabilities of persons paying or taking an instrument bearing a fraudulent indorsement made by an employee who has been given "responsibility" by the employer for such instruments precludes a common-law negligence action against banks taking checks fraudulently indorsed by dishonest employees.[15]

Under the statute, the bank must bear the burden of proving the first three elements, that is, that the bank acted in good faith, that the embezzler was an employee entrusted with responsibility for the check, and that the check was fraudulently indorsed, and once the bank meets this burden, the burden shifts to the employer to present evidence raising a fact issue on whether the bank failed to exercise ordinary care with respect to the check.[16]

Footnotes

1 U.C.C. § 3-405(b) [2002].

2 U.C.C. § 3-405(a)(1) [2002].

3 U.C.C. § 3-405(a)(2)(i) [2002].

4 U.C.C. § 3-405(a)(2)(ii) [2002].

[5] Coastal Agricultural Supply, Inc. v. JP Morgan Chase Bank, N.A., 759 F.3d 498, 84 U.C.C. Rep. Serv. 2d 165 (5th Cir. 2014) (applying Texas law), further holding that the statute provides a collecting bank an affirmative defense to a claim of money had and received.

[6] 115 Spring Street Co. v. JPMorgan Chase Bank, N.A., 100 A.D.3d 571, 955 N.Y.S.2d 17, 79 U.C.C. Rep. Serv. 2d 174 (1st Dep't 2012).

[7] U.C.C. § 3-405 [2002] Official Comment 3.

[8] Govoni & Sons Const. Co., Inc. v. Mechanics Bank, 51 Mass. App. Ct. 35, 742 N.E.2d 1094, 43 U.C.C. Rep. Serv. 2d 1058 (2001).

[9] U.C.C. § 3-405(c)(i) [2002].

[10] U.C.C. § 3-405(c)(ii) [2002].

[11] U.C.C. § 3-405 [2002] Official Comment 1.

[12] U.C.C. § 3-405 [2002] Official Comment 1.

[13] U.C.C. § 3-405 [2002] Official Comment 1, providing further that "ordinary care" is defined in § 3-103(a)(9).

[14] U.C.C. § 3-405 [2002] Official Comment 1.

[15] Lee Newman, M.D., Inc. v. Wells Fargo Bank, 87 Cal. App. 4th 73, 104 Cal. Rptr. 2d 310, 43 U.C.C. Rep. Serv. 2d 912 (2d Dist. 2001) (referring to U.C.C. § 3-405 [2002]).

[16] Coastal Agricultural Supply, Inc. v. JP Morgan Chase Bank, N.A., 759 F.3d 498, 84 U.C.C. Rep. Serv. 2d 165 (5th Cir. 2014) (applying Texas law).

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XI. Liability of Parties

D. Agents and Representatives or Their Principals

2. Employers

§ 453. What constitutes employee with “responsibility”

Topic Summary | Correlation Table | References

West’s Key Number Digest

West’s Key Number Digest, Bills and Notes 279

The term “responsibility” with respect to instruments means authority:

- to sign or indorse instruments on behalf of the employer[1]
- to process instruments received by the employer for bookkeeping purposes, for deposit to an account, or for other disposition[2]
- to prepare or process instruments for issue in the name of the employer[3]
- to supply information determining the names or addresses of payees of instruments to be issued in the name of the employer[4]
- to control the disposition of instruments to be issued in the name of the employer[5]
- to act otherwise with respect to instruments in a responsible capacity[6]

For purposes of the statute allowing fraudulent indorsements of an employer’s checks by an employee to be effective in certain situations where the employer entrusted the employee with responsibility with respect to an instrument, an employer did not entrust an employee with “responsibility,” where the employee had no authority to sign, indorse, process, prepare, or control disposition of any checks received by the employer, the employee did not supply information for instruments to be issued in the employer’s name, and the employee had no job duties relating to the receipt or deposit of checks.[7] Similarly, a corporation’s worker who fraudulently deposited corporate checks into his personal checking account was not a “responsible employee,” where the worker’s only duty with respect to the corporation’s checks was to transport the deposit slips to and from the bank, and the worker did not have authority to sign or endorse checks on the corporation’s behalf, nor did the worker have authority to process any received checks for bookkeeping purposes or to prepare or process any checks for the corporation or the corporation’s owner.[8] However, an employer could not recover from a bank and a bank manager for conversion of a check, issued by the employer and fraudulently endorsed by an employee, due to the faithless employee defense, where the employer admitted that the employee “had authority to supply information determining the names or addresses of payees of instruments to be issued” in the employer’s name.[9]

The term “responsibility” does not include authority that merely allows an employee to have access to instruments or blank

or incomplete instrument forms that are being stored or transported or are part of the incoming or outgoing mail, or similar access.[10]

Observation:

Employee's duties include stamping Employer's unrestricted blank indorsement on checks received by Employer and depositing them in Employer's bank account. After stamping Employer's unrestricted blank indorsement on a check, Employee steals the check and deposits it in Employee's personal bank account. Section 3-405 does not apply, because there is no forged indorsement. Employee is authorized by Employer to indorse Employer's checks. The fraud by Employee is not the indorsement but rather the theft of the indorsed check.[11]

Footnotes

1 U.C.C. § 3-405(a)(3)(i) [2002].

2 U.C.C. § 3-405(a)(3)(ii) [2002].

3 U.C.C. § 3-405(a)(3)(iii) [2002].

4 U.C.C. § 3-405(a)(3)(iv) [2002].

5 U.C.C. § 3-405(a)(3)(v) [2002].

6 U.C.C. § 3-405(a)(3)(vi) [2002].

7 Med Data Service Bureau, L.L.C. v. Bank of Louisiana in New Orleans, 898 So. 2d 482, 55 U.C.C. Rep. Serv. 2d 580 (La. Ct. App. 1st Cir. 2004).

8 Dean Classic Cars, L.L.C. v. Fidelity Bank and Trust Co., 978 So. 2d 393, 64 U.C.C. Rep. Serv. 2d 925 (La. Ct. App. 1st Cir. 2007).

9 Hanh H. Duong v. Bank One, N.A., 169 S.W.3d 246, 57 U.C.C. Rep. Serv. 2d 207 (Tex. App. Fort Worth 2005).

10 U.C.C. § 3-405(a)(3) [2002].

11 U.C.C. § 3-405 [2002] Official Comment 3, Case No. 4, providing further that whether Employer has a cause of action against the bank in which the check was deposited is determined by whether the bank had notice of the breach of fiduciary duty by Employee; the issue is determined under U.C.C. § 3-307.

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§ 454. What constitutes employee with "responsibility"—Physical access distinguished from responsibility

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 279

Treatises and Practice Aids

As to responsibility for processing instruments—physical access distinguished from responsibility, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

The concept of responsibility for instruments is distinguishable from merely having physical access to the instruments, even though physical access is within the scope of the employment of the employee. Thus, the fact that any employee has access to instruments, or to blank or incomplete instruments, whether for storage or transportation or for any other similar purpose, does not bring the action of the employee within the scope of the statute.[1]

Observation:

Janitor, an employee of Employer, steals a check for a very large amount payable to Employer after finding it on a desk in one of Employer's offices. Janitor forges Employer's indorsement on the check and obtains payment. Since Janitor was not entrusted with "responsibility" with respect to the check § 3-405 does not apply.[2]

Footnotes

[1] Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-405:14 (3d ed.).

[2] U.C.C. § 3-405 [2002] Official Comment 3, Case No. 1, stating further that § 3-406 might apply to this case; the issue would be whether Employer was negligent in safeguarding the check; if not, Employer could assert that the indorsement was forged and bring an action for conversion against the depositary or payor bank under § 3-420.

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§ 455. What constitutes employee with "responsibility"—Hybrid authority of employee

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 279

Treatises and Practice Aids

As to responsibility for processing instruments—hybrid authority of employee, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

In order to be an employee charged with responsibility as to instruments, there is no requirement that the employee's scope of employment be limited exclusively to "responsibility" for instruments. If some of the employee's duties bring the employee within the scope of "responsibility" for instruments, the statute is applicable. It does not matter that at other times the employee may be acting or performing duties as to matters unrelated to "responsibility" for instruments.[1]

Footnotes

[1] Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-405:15 (3d ed.).

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§ 456. Comparative negligence

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 279

Treatises and Practice Aids

As to U.C.C. 3-405 [Rev] comparative negligence, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

If the person paying the instrument, or taking it for value or for collection, fails to exercise ordinary care in paying or taking the instrument, and that failure substantially contributes to loss resulting from the fraud, the person bearing the loss may recover from the person failing to exercise ordinary care to the extent the failure to exercise ordinarily care contributed to the loss.[1] This provision adopts the principle of comparative negligence. The concept of comparative negligence reflects a determination that all participants in the process have a duty to exercise ordinary care in the drawing and handling of instruments and that the failure to exercise that duty will result in a sharing of the liability by the person sustaining the loss.[2] Comparative negligence applies to determine the liability of the employer of a dishonest employee/embezzler and a bank.[3]

Failure to exercise ordinary care is determined in the context of all the facts relating to the bank's conduct with respect to the bank's collection of the check. If the trier of fact finds that there was such a failure and that the failure substantially contributed to the loss, it could find the depositary bank liable to the extent the failure contributed to the loss.[4]

Observation:

Suppose that the computer that controls Employer's check-writing machine was programmed to cause a check to be issued to Supplier Company, a well-known national corporation. In addition, the check is for a very large amount of money. Before depositing the check, Employee opens an account in Depositary Bank in the name of the corporation and states to the person conducting the transaction for the bank that Employee is the manager of a new office being opened by the corporation. Depositary Bank opens the account without requiring Employee to produce any resolutions of the corporation's board of directors or other evidence of authorization of Employee to act for the corporation. A few days later, the check is deposited, the account is credited, and the check is presented for payment. After Depositary Bank receives payment, it allows Employee to withdraw the credit by a wire transfer to an account in a bank in a foreign country. The trier of fact could find that Depositary Bank did not exercise ordinary care and that the failure to exercise ordinary care contributed to the loss suffered by Employer. The trier of fact could allow recovery by Employer from Depositary Bank for all or part of the loss suffered by Employer.[5]

Footnotes

1 U.C.C. § 3-405(b) [2002].

2 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-405:6 [Rev.] (3d ed.).

3 Victory Clothing Co., Inc. v. Wachovia Bank, N.A., 59 U.C.C. Rep. Serv. 2d 376 (Pa. C.P. 2006) (holding that a bank was 70% liable for an employer's loss because it violated its own rules in repeatedly allowing the deposit of corporate checks into the employer/embezzler's personal account, while the employer was 30% liable because it was negligent in its supervision of the employee and for not discovering the fraud for almost two years).

4 U.C.C. § 3-405 [2002] Official Comment 4.

5 U.C.C. § 3-405 [2002] Official Comment 4.

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Research References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 279, 293, 296, 326, 534

A.L.R. Library

A.L.R. Index, Acceptance
A.L.R. Index, Alteration of Instruments
A.L.R. Index, Bills and Notes
A.L.R. Index, Checks and Drafts
A.L.R. Index, Collecting Banks
A.L.R. Index, Consideration
A.L.R. Index, Discharge
A.L.R. Index, Disclaimers
A.L.R. Index, Dishonor
A.L.R. Index, Good Faith
A.L.R. Index, Indorsements
A.L.R. Index, Presentation or Presentment
A.L.R. Index, Signatures
A.L.R. Index, Uniform Commercial Code (UCC)
A.L.R. Index, Warranties
West's A.L.R. Digest, Bills and Notes 279, 293, 296, 326, 534

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§ 457. Presentment warranties, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 279, 296, 326

A.L.R. Library

What constitutes change of position by payee so as to preclude recovery of payment made under mistake, 40 A.L.R.2d 997

The Uniform Commercial Code provides for presentment warranties with respect to negotiable instruments which are given by any prior transferor and by any person who obtains payment or acceptance.[1] The other class of warranties arising under the Code, the "transfer" warranties, are given by any person who transfers an instrument and receives consideration, and run to the transferee.[2]

Observation:

§ 4-207 fixes the same warranties for the collection of items through the banking system that § 3-417 establishes for the transfer of commercial paper not collected through the banking system.[3]

Footnotes

[1] U.C.C. § 3-417 [2002].

[2] U.C.C. § 3-416 [2002] Official Comment 1.
As to transfer warranties, see §§ 468 to 480.

[3] Sun 'n Sand, Inc. v. United California Bank, 21 Cal. 3d 671, 148 Cal. Rptr. 329, 582 P.2d 920, 21 U.C.C. Rep. Serv. 2d 1003 (1978).

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1. Presentment Warranties

§ 458. Right to enforce instrument

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 279, 296, 326

If an unaccepted draft is presented to the drawee for payment or acceptance, and the drawee accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that the warrantor is, or was, at the time the warrantor transferred the draft, a person entitled to enforce the draft, or authorized to obtain payment or acceptance of the draft on behalf of a person entitled to enforce the draft.[1] In other words, all prior parties who transfer an instrument, or present it for payment or acceptance warrant the genuineness of prior indorsements.[2]

Definition:

The term "person entitled to enforce" an instrument means either the holder of the instrument, a nonholder in possession of the instrument who has the rights of a holder, or a person not in possession of the instrument who is entitled to enforce the instrument. A person may be a person entitled to enforce the instrument, even though the person is not the owner of the instrument or is in wrongful possession of the instrument.[3] A party is a "holder" of promissory note, and thus qualifies as a "person entitled to enforce" the note as that phrase is defined in the statute, if the party possesses the note and either (1) the note has been made payable specifically to the order of the party in possession, or (2) the note is payable to the bearer.[4] A person to whom a note is delivered and who is in possession thereof may qualify as a person entitled to enforce it, even if the note has not been indorsed by the payee; however, in the absence of an indorsement by the payee, the person in possession must demonstrate the purpose of the delivery in order to qualify as a person entitled to enforce the note.[5]

As a result of this Uniform Commercial Code subsection, payment of a check missing a necessary indorsement of a copayee breaches the presentment warranty of good title.[6] However, the revision retains the rule that the drawee does not admit the authenticity of indorsements.[7]

A drawer who has suffered a loss on a forged check lacks standing to bring suit for breach of presentment warranty of good title directly against the "depositary bank."[8] The drawer's proper recourse is a suit against the "payor bank" for recrediting of its account.[9]

Footnotes

1 U.C.C. § 3-417(a)(1) [2002].

2 Perini Corp. v. First Nat. Bank of Habersham County, Georgia, 553 F.2d 398, 21 U.C.C. Rep. Serv. 929 (5th Cir. 1977).

3 U.C.C. § 3-301 [2002], referring to U.C.C. §§ 3-309, 3-418(d) [2002].

4 In re Tarantola, 491 B.R. 111 (Bankr. D. Ariz. 2013) (applying Arizona law).

5 In re Bryant, 600 B.R. 533, 98 U.C.C. Rep. Serv. 2d 773 (Bankr. N.D. Tex. 2019) (applying Texas law).

6 Longview Bank & Trust Co. v. First Nat. Bank of Azle, 750 S.W.2d 297, 6 U.C.C. Rep. Serv. 2d 447 (Tex. App. Fort Worth 1988) (decided under prior law).

7 U.C.C. § 3-417 [2002] Official Comment 3.

8 In re Ostrom-Martin, Inc., 188 B.R. 245, 28 U.C.C. Rep. Serv. 2d 267 (Bankr. C.D. Ill. 1995).

9 In re Ostrom-Martin, Inc., 188 B.R. 245, 28 U.C.C. Rep. Serv. 2d 267 (Bankr. C.D. Ill. 1995).

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§ 459. No alteration

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

Treatises and Practice Aids

As to alteration defined, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

As to no alteration, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that the draft has not been altered.[1]

Definition:

The term "alteration" means an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.[2] Any such change is an alteration and it is unnecessary to determine whether the change is material. To constitute an alteration, the change must be made to the instrument itself. For example, a check is altered and not forged when a payee's name is changed from one name to another since an alteration is an unauthorized change in an instrument that purports to modify the obligation of a party.[3] By contrast, a counterfeit or fake check, as opposed to the modification of an existing check, does not meet the definition of alteration. A counterfeit check is not an alteration of an existing check but an entirely new instrument.[4]

A person presenting an unaccepted draft makes a warranty that "the draft has not been altered." The warranty of a transferor is that there has been no alteration prior to the time of the transferor's transfer. Thus, the transferor is not in breach when the alteration is made after transferor's transfer.[5] In addition, the warranty of both the transferor and the presenter for payment that there has been no alteration is not breached unless the change is an alteration within the meaning of the statute dealing with alteration.[6]

Footnotes

1 U.C.C. § 3-417(a)(2) [2002].

2 U.C.C. § 3-407(a) [2002].

3 Wachovia Bank, N.A. v. Foster Bancshares, Inc., 457 F.3d 619, 60 U.C.C. Rep. Serv. 2d 1126 (7th Cir. 2006).

4 Bank of America, N.A. v. Amarillo Nat. Bank, 156 S.W.3d 108, 55 U.C.C. Rep. Serv. 2d 496 (Tex. App. Amarillo 2004).

5 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-417:19 (3d ed.).

6 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-417:19 (3d ed.).

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§ 460. Signatures

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

A.L.R. Library

Right and remedy of drawer of check against collecting bank which receives it on forged indorsement and collects it from drawee bank, 99 A.L.R.2d 637

Treatises and Practice Aids

As to presentment warranties as to unaccepted draft, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that the warrantor has no knowledge that the signature of the drawer of the draft is unauthorized.[1]

Comment:

This subsection retains the rule that the drawee takes the risk that the drawer's signature is unauthorized, unless the person presenting the draft has knowledge that the drawer's signature is unauthorized.[2] Under this subsection, the warranty of no knowledge that the drawer's signature is unauthorized is also given by prior transferors of the draft.[3]

The person presenting an unaccepted draft for acceptance or payment makes a warranty that the person has no knowledge that the drawer's signature is unauthorized.[4]

Distinction:

The presentment warranties provide that the person warrants that the person has no knowledge that the maker's or drawer's signature is unauthorized, while the transfer warranties provide that the transferor warrants that all signatures are authorized.[5]

Footnotes

1 U.C.C. § 3-417(a)(3) [2002].
Pursuant to the common-law doctrine of money had and received, a collecting bank which has accepted a check on another bank on a forged indorsement may assert the defenses of laches, fault by payee, or ratification or authorization of the forged indorsement. Coastal Agricultural Supply, Inc. v. JP Morgan Chase Bank, N.A., 759 F.3d 498, 84 U.C.C. Rep. Serv. 2d 165 (5th Cir. 2014) (applying Texas law).
A checking account owner's remedy for the amount of fraudulent checks charged against the customer's account was against its own bank, i.e., the drawee bank, rather than depositary bank that accepted deposit of the checks. Innovative Hospitality Systems, L.L.C. v. Abe's Inc., 52 So. 3d 313, 73 U.C.C. Rep. Serv. 2d 251 (La. Ct. App. 3d Cir. 2010).

2 U.C.C. § 3-417 [2002] Official Comment 3.

3 U.C.C. § 3-417 [2002] Official Comment 3.

4 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-417:15 (3d ed.).

5 Dozier v. First Alabama Bank of Montgomery, N.A., 363 So. 2d 781, 25 U.C.C. Rep. Serv. 802 (Ala. Civ. App. 1978).

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Bills and Notes

Lonnie E. Griffith, Jr., J.D.; Sonja Larsen, J.D.; Lucas Martin, J.D.; Karl Oakes, J.D.; Eric C. Surette, J.D.; and Barbara J. Van Arsdale, J.D.

XI. Liability of Parties

E. Warranties

1. Presentment Warranties

§ 461. Remotely created consumer item

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

If an unaccepted draft is presented to the drawee for payment or acceptance and the drawee accepts the draft, the person obtaining payment or acceptance, at the time of presentment, and a previous transferor of the draft, at the time of transfer, warrant to the drawee making payment or accepting the draft in good faith that with respect to any remotely created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.[1] In circumstances involving remotely created consumer items, the payor bank can use a warranty claim to absolve itself of responsibility for honoring an unauthorized item. The provision rests on the premise that monitoring by depositary banks can control this type of fraud more effectively than any practices readily available to payor banks. The provision expressly includes both the case in which the consumer does not authorize the item at all and also the case in which the consumer authorizes the item but in an amount different from the amount in which the item is drawn.[2]

Footnotes

1 U.C.C. § 3-417(a)(4) [2002].

2 U.C.C. § 3-416 [2002] Official Comment 8.

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XI. Liability of Parties

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1. Presentment Warranties

§ 462. Measure of damages

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

Forms

Forms relating to damages for breach of presentment or transfer warranties, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [Westlaw®(r) Search Query]

A drawee making payment may recover from any warrantor damages for breach of warranty equal to the amount paid by the drawee, less the amount the drawee received or is entitled to receive from the drawer because of the payment. In addition, the drawee is entitled to compensation for expenses and loss of interest resulting from the breach.[1] The right of the drawee to recover damages under this provision is not affected by any failure of the drawee to exercise ordinary care in making payment.[2]

If the drawee accepts the draft, breach of warranty is a defense to the obligation of the acceptor. If the acceptor makes payment with respect to the draft, the acceptor is entitled to recover from any warrantor, for breach of warranty, the amounts stated in this provision.[3]

There is no express provision for attorney's fees, but attorney's fees are not meant to be necessarily excluded. They could be granted, because they fit within the language "expenses … resulting from the breach."[4]

Footnotes

1 U.C.C. § 3-417(b) [2002].

2 U.C.C. § 3-417(b) [2002].

3 U.C.C. § 3-417(b) [2002].

4 U.C.C. § 3-417 [2002] Official Comment 5.

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§ 463. Presentment warranties as to checks and other unaccepted drafts

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

A.L.R. Library

Construction and application of U.C.C. sec. 3-405(1)(a) involving issuance of negotiable instrument induced by impostor, 92 A.L.R.3d 608

Bills and notes: nominal payee rule of U.C.C. sec. 3-405(1)(b), 92 A.L.R.3d 268

Trial Strategy

Commercial Paper: Negligence Contributing to Alteration or Unauthorized Signature Under U.C.C. § 3-406, 14 Am. Jur. Proof of Facts 2d 693

Bank's Failure to Use Ordinary Care in Detecting Forged or Altered Checks, 13 Am. Jur. Proof of Facts 2d 347

If the drawee asserts a claim for breach of warranty based on an unauthorized indorsement of the draft or an alteration of the draft, the warrantor may defend by proving that the indorsement is effective under the statute governing imposters and fictitious payees[1] or the statute governing an employer's liability for fraudulent endorsement by an employee,[2] or the drawer is precluded from asserting against the drawee the unauthorized indorsement or alteration.[3]

Comment:

If the drawer's conduct contributed to a loss from forgery or alteration, the drawee should not be allowed to shift the loss from the drawer to the warrantor.[4]

Footnotes

1 U.C.C. § 3-404 [2002].

2 U.C.C. § 3-405 [2002].
As to an employer's responsibility for a fraudulent indorsement by an employee, see §§ 452 to 456.

3 U.C.C. § 3-417(c) [2002], referring to U.C.C. §§ 3-406, 4-406.

4 U.C.C. § 3-417 [2002] Official Comment 6.

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XI. Liability of Parties

E. Warranties

1. Presentment Warranties

§ 464. Presentment warranties as to accepted drafts, dishonored drafts, and notes

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

If a dishonored draft is presented for payment to the drawer or an indorser, or any other instrument is presented for payment to a party obliged to pay the instrument, and payment is received, then the following rules apply.[1] First, the person obtaining payment and a prior transferor of the instrument warrant to the person making payment in good faith that the warrantor is, or was, at the time the warrantor transferred the instrument, a person entitled to enforce the instrument or authorized to obtain payment on behalf of a person entitled to enforce the instrument.[2] Second, the person making payment may recover from any warrantor, for breach of warranty, an amount equal to the amount paid plus expenses and loss of interest resulting from the breach.[3]

This subsection applies to presentment of notes and accepted drafts to any party obliged to pay the instrument, including an indorser, and to presentment of dishonored drafts if made to the drawer or an indorser.[4]

There are no warranties comparable to those regarding alterations or unauthorized signatures on unaccepted drafts, because they are appropriate only in the case of presentment to the drawee of an unaccepted draft.[5] With respect to presentment of an accepted draft to the acceptor, there is no warranty with respect to alteration or knowledge that the signature of the drawer is unauthorized.[6] Those warranties were made to the drawee when the draft was presented for acceptance and breach of that warranty is a defense to the obligation of the drawee as acceptor to pay the draft.[7] If the drawee pays the accepted draft, the drawee may recover the payment from any warrantor who was in breach of warranty when the draft was accepted.[8] Thus, there is no necessity for these warranties to be repeated when the accepted draft is presented for payment.[9] If presentment is made to the drawer or maker, there is no necessity for a warranty concerning the signature of that person or with respect to alteration. If presentment is made to an indorser, the indorser had itself warranted authenticity of signatures and that the instrument was not altered.[10]

Caution:

There is no warranty made to the drawer under this subsection when presentment is made to the drawee.[11]

Footnotes

1 U.C.C. § 3-417(d) [2002].

2 U.C.C. § 3-417(d)(1) [2002].

3 U.C.C. § 3-417(d)(2) [2002].

4 U.C.C. § 3-417 [2002] Official Comment 4.

5 U.C.C. § 3-417 [2002] Official Comment 4, referring to U.C.C. § 3-417(a)(2), (3) [2002].

6 U.C.C. § 3-417 [2002] Official Comment 4.

7 U.C.C. § 3-417 [2002] Official Comment 4, referring to U.C.C. § 3-417(a)(2), (3) [2002].

8 U.C.C. § 3-417 [2002] Official Comment 4, referring to U.C.C. § 3-417(b) [2002].

9 U.C.C. § 3-417 [2002] Official Comment 4.

10 U.C.C. § 3-417 [2002] Official Comment 4, referring to U.C.C. § 3-417(a)(2), (3) [2002].

11 U.C.C. § 3-417 [2002] Official Comment 2, referring to U.C.C. § 3-417(a) [2002].

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XI. Liability of Parties

E. Warranties

1. Presentment Warranties

§ 465. Disclaimer of warranties of presentment

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Bills and Notes 296

The warranties of presentment made to the drawer and drawee cannot be disclaimed with respect to checks.[1] This provision recognizes that checks are normally paid by automated means and that payor banks rely on warranties in making payment. Thus, it is not appropriate to allow disclaimer of warranties appearing on checks that normally will not be examined by the payor bank.[2]

An indorser of a negotiable instrument assumes credit liability unless the indorser disclaims it by indorsing the instrument "without recourse"; such indorsement does not, however, disclaim applicable transfer and presentment warranties.[3]

Footnotes

1 U.C.C. § 3-417(e) [2002], referring to U.C.C. § 3-417(a), (d) [2002].

2 U.C.C. § 3-417 [2002] Official Comment 7.

3 LifeWise Master Funding v. Telebank, 374 F.3d 917, 53 U.C.C. Rep. Serv. 2d 1020 (10th Cir. 2004).
As to the disclaimer of warranties of transfer, see § 478.

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1. Presentment Warranties

§ 466. Notice of breach of warranties

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.[1]

Footnotes

[1] U.C.C. § 3-417(e) [2002], referring to U.C.C. § 3-417(b), (d) [2002].

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E. Warranties

1. Presentment Warranties

§ 467. Accrual of cause of action

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

A cause of action for breach of warranty accrues when the claimant has reason to know of the breach.[1]

Comment:

Because the traditional term "cause of action" may have been replaced in some states by "claim for relief" or some equivalent term, the words "cause of action" have been bracketed in the U.C.C. to indicate that the words may be replaced by an appropriate substitute to conform to local practice.[2]

CUMULATIVE SUPPLEMENT

Cases:

Once a mortgage debt has been accelerated by a demand or commencement of an action, the entire sum becomes due and the six-year statute of limitations begins to run on the entire mortgage. U.S. Bank National Association v. Stewart, 187 A.D.3d 1330, 134 N.Y.S.3d 469 (3d Dep't 2020).

[END OF SUPPLEMENT]

Footnotes

[1] U.C.C. § 3-417(f) [2002].
A promissory note was a negotiable instrument and thus was subject to the six-year limitations period, despite the fact that the note constituted a written contract as well. Bank of New York Mellon v. Walker, 2017-Ohio-535, 78 N.E.3d 930, 91 U.C.C. Rep. Serv. 2d 1117 (Ohio Ct. App. 8th Dist. Cuyahoga County 2017).

[2] U.C.C. § 3-417 [2002] Official Comment 8.

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XI. Liability of Parties

E. Warranties

2. Transfer Warranties

§ 468. Transfer warranties, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 279, 293, 296, 326

Treatises and Practice Aids

As to transfer warranties, generally, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

The transferor of an instrument makes certain warranties. It does not matter whether the transfer also constituted a negotiation or whether there was, or was not, an indorsement. In all cases, the warranties made by the transferor are the same. The only distinction is in terms of who may enforce the warranties.[1]

The transfer warranties in favor of the immediate transferee apply to all persons who transfer an instrument for consideration, whether or not the transfer is accompanied by indorsement.[2] Any consideration sufficient to support a simple contract will support those warranties.[3] If there is an indorsement, the warranty runs with the instrument, and the remote holder may sue the indorser-warrantor directly, and thus avoid a multiplicity of suits.[4]

Footnotes

1 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:14 (3d ed.).

2 U.C.C. § 3-416 [2002] Official Comment 1, referring to U.C.C. § 3-416(a) [2002].

[3] U.C.C. § 3-416 [2002] Official Comment 1.

[4] U.C.C. § 3-416 [2002] Official Comment 1.

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E. Warranties

2. Transfer Warranties

§ 469. Right to enforce instrument

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

Treatises and Practice Aids

As to transfer warranties, generally, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that the warrantor is a person entitled to enforce the instrument.[1] This warranty is one that there are no unauthorized or missing indorsements that prevent the transferor from making the transferee a person entitled to enforce the instrument.[2]

The warranty does not relate to whether the transferor is the beneficial owner of the instrument. Thus, proof that the transferor was acting as agent for another does not, by itself, establish that there was a breach of the warranty of the right to enforce the instrument.[3]

Footnotes

1 U.C.C. § 3-416(a)(1) [2002].

2 U.C.C. § 3-416 [2002] Official Comment 2.

[3] Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:15 (3d ed.).

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XI. Liability of Parties

E. Warranties

2. Transfer Warranties

§ 470. Signatures

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

Treatises and Practice Aids

As to transfer warranties, generally, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee, that all signatures on the instrument are authentic and authorized.[1] This warranty is breached where there is any forged or unauthorized signatures on the instrument including a forged or unauthorized drawer's, maker's, or acceptor's signature, as well as an unauthorized or forged indorsement whether or not in the chain of title. This warranty is also breached where the signature of a witness is forged.[2]

Footnotes

[1] U.C.C. § 3-416(a)(2) [2002].
The phrase "All Prior Endorsements Guaranteed" does not constitute a "payment guarantee"; rather, it simply guarantees that the prior endorsers' signatures were valid and not forgeries. King v. Bank of New York Mellon Corp., NB, 957 F. Supp. 2d 680, 81 U.C.C. Rep. Serv. 2d 17 (E.D. Va. 2013), aff'd, 585 Fed. Appx. 147, 85 U.C.C. Rep. Serv. 2d 126 (4th Cir. 2014) (applying New York law).
As to the distinction between the transfer warranty regarding signatures and the presentment warranty regarding

signatures, see § 460.

[2] Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:16 (3d ed.).

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XI. Liability of Parties

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2. Transfer Warranties

§ 471. No alteration

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee that the instrument has not been altered.[1]

Definition:

The term "alteration" means an unauthorized change in an instrument that purports to modify in any respect the obligation of a party, or an unauthorized addition of words or numbers or other change to an incomplete instrument relating to the obligation of a party.[2]

Footnotes

1 U.C.C. § 3-416(a)(3) [2002].

2 U.C.C. § 3-407(a) [2002].

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2. Transfer Warranties

§ 472. Absence of defense or recoupment claim against transferor

Topic Summary | Correlation Table | References

West's Key Number Digest
West's Key Number Digest, Bills and Notes 296

A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee, that the instrument is not subject to a defense or claim in recoupment of any party which can be asserted against the warrantor.[1] The rationale of this subsection is that the transferee does not undertake to buy an instrument that is not enforceable in whole or in part, unless there is a contrary agreement.[2] Even if the transferee takes as a holder in due course who takes free of the defense or claim in recoupment, the warranty gives the transferee the option of proceeding against the transferor rather than litigating with the obligor on the instrument the issue of the holder-in-due-course status of the transferee.[3]

Footnotes

1 U.C.C. § 3-416(a)(4) [2002].

2 U.C.C. § 3-416 [2002] Official Comment 3.

3 U.C.C. § 3-416 [2002] Official Comment 3.

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XI. Liability of Parties

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2. Transfer Warranties

§ 473. Insolvency proceedings

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

Treatises and Practice Aids

As to transfer warranties, generally, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Forms

Forms relating to breach of warranty; known bankrupt transferor or maker, see Am. Jur. Pleading and Practice Forms, Commercial Code; Uniform Commercial Code Pleading and Practice Forms, Article 3 Negotiable Instruments [Westlaw®(r) Search Query]

A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee, that the warrantor has no knowledge of any insolvency proceedings commenced with respect to the maker or acceptor or, in the case of an unaccepted draft, the drawer.[1] There is no breach of this warranty unless the transferor had actual knowledge of the insolvency proceedings. It is irrelevant that the transferor had notice of facts that would put a reasonable person on inquiry that would have led to knowledge that an insolvency proceeding had been commenced.[2]

Under this subsection, the transferor does not warrant against difficulties of collection, impairment of the credit of the obligor, or even insolvency. The transferee is expected to determine such questions before taking the obligation.[3] If insolvency proceedings have been instituted against the party who is expected to pay and the transferor knows it, the concealment of that fact amounts to a fraud upon the transferee, and the warranty against knowledge of such proceedings is provided accordingly.[4]

Footnotes

1 U.C.C. § 3-416(a)(5) [2002].

2 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:19 (3d ed.).

3 U.C.C. § 3-416 [2002] Official Comment 4.

4 U.C.C. § 3-416 [2002] Official Comment 4.

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2. Transfer Warranties

§ 474. Remotely created consumer item

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

A person who transfers an instrument for consideration warrants to the transferee and, if the transfer is by indorsement, to any subsequent transferee, that with respect to a remotely created consumer item, that the person on whose account the item is drawn authorized the issuance of the item in the amount for which the item is drawn.[1] In certain circumstances involving remotely created consumer items, the payor bank can use a warranty claim to absolve itself of responsibility for honoring an unauthorized item. The provision rests on the premise that monitoring by depositary banks can control this type of fraud more effectively than any practices readily available to payor banks. The provision expressly includes both the case in which the consumer does not authorize the item at all and also the case in which the consumer authorizes the item but in an amount different from the amount in which the item is drawn.[2] The provision supplements applicable federal law, which requires telemarketers who submit instruments for payment to obtain the customer's "express verifiable authorization," which may be either in writing or tape-recorded and must be made available upon request to the customer's bank. Some states also have consumer-protection laws governing authorization of instruments in telemarketing transactions.[3]

Footnotes

1 U.C.C. § 3-416(a)(6) [2002].

2 U.C.C. § 3-416 [2002] Official Comment 8.

3 U.C.C. § 3-416 [2002] Official Comment 8.

Works.

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2. Transfer Warranties

§ 475. Who makes transfer warranties

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

Treatises and Practice Aids

As to transfer warranties, generally, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

The transfer warranties are made by one who transfers the instrument for consideration.[1] Any consideration sufficient to support a simple contract is adequate.[2] Since "consideration" rather than "value" is required, the promised performance need not be executed.[3]

Since the transfer warranties are only made by a transferor who has received consideration, it necessarily follows that the warranties are not made by a transferor who does not receive any consideration, such as a holder who transfers the instrument as a gift.[4]

Footnotes

1 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:4 [Rev.] (3d ed.).

2 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:4 [Rev.] (3d ed.).

[3] Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:4 [Rev.] (3d ed.).

[4] Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:4 [Rev.] (3d ed.).

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2. Transfer Warranties

§ 476. Who may enforce transfer warranties

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

Treatises and Practice Aids

As to transfer warranties, generally, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Transfer warranties that are applicable upon the negotiation of a negotiable instrument flow only to a payor and collecting banks and/or to those banks' transferees, and not to a payee, who lacks standing to pursue a cause of action for breach of these transfer warranties.[1] If the transfer of an instrument is made by indorsement and the indorsee receives consideration, the transfer warranties run to the immediate transferee and to any subsequent transferee of the instrument.[2] It is immaterial whether any of the transferees is a holder or has the rights of a holder in due course.[3] If the transferor does not indorse the instrument, the warranties run only to the immediate transferee.[4]

Where the transfer is by indorsement, it is immaterial whether the indorsement is blank or special, or whether it is qualified or unqualified. It is also immaterial whether or not it is a restrictive indorsement.[5]

In all cases, the person seeking to enforce a transfer warranty must show that such person took the instrument in good faith. Good faith requires that the transferee be honest in fact and observe reasonable commercial standards of fair dealing. Good faith is usually satisfied as long as the transferee lacked knowledge of the facts constituting the breach of warranty.[6]

If the ultimate holder of the instrument has the rights of a holder in due course who takes free of the defense of claim in recoupment, that holder may, instead of proceeding against the obligor, maintain an action for breach of warranty in order to

avoid litigating the holder's status as holder in due course.[7]

Footnotes

1 In re World Metals, Inc., 313 B.R. 720, 54 U.C.C. Rep. Serv. 2d 754 (Bankr. N.D. Ohio 2004).

2 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:6 [Rev.] (3d ed.).

3 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:6 [Rev.] (3d ed.).

4 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:6 [Rev.] (3d ed.).

5 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:6 [Rev.] (3d ed.).

6 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:6 [Rev.] (3d ed.).

7 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:6 [Rev.] (3d ed.).

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XI. Liability of Parties

E. Warranties

2. Transfer Warranties

§ 477. Measure of damages

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 534

Treatises and Practice Aids

As to transfer warranties, generally, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

A person to whom the transfer warranties are made and who took the instrument in good faith may recover from the warrantor as damages for breach of warranty an amount equal to the loss suffered as a result of the breach, but not more than the amount of the instrument plus expenses and loss of interest incurred as a result of the breach.[1] The basic measure of the loss suffered as a result of the breach is the difference in value between what the instrument would have been worth had it been as warranted and what it is worth "as is."[2]

There is no express provision for attorney's fees, but attorney's fees are not meant to be necessarily excluded. They could be granted, because they fit within the phrase "expenses … incurred as a result of the breach." The intention is to leave to other state law the issue as to when attorney's fees are recoverable.[3] However, it has been stated that the provision governing damages for breach of transfer warranties does not provide for an award of attorney's fees to prevailing plaintiffs. Absent a specific statutory provision allowing for fees as an item of expenses, the statutory phrase "expenses incurred as a result of the breach" does not include attorney's fees.[4]

Footnotes

[1] U.C.C. § 3-416(b) [2002], referring to U.C.C. § 3-416(a) [2002].

[2] Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:12 [Rev.] (3d ed.).

[3] U.C.C. § 3-416 [2002] Official Comment 6.

[4] Grasso v. Crow, 57 Cal. App. 4th 847, 67 Cal. Rptr. 2d 367, 35 U.C.C. Rep. Serv. 2d 1288 (2d Dist. 1997).

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XI. Liability of Parties

E. Warranties

2. Transfer Warranties

§ 478. Disclaimer of transfer warranties

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

Treatises and Practice Aids

As to transfer warranties, generally, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Forms

Forms relating to disclaimer of warranty, generally, see Am. Jur. Pleading and Practice Forms, Commercial Code [Westlaw®(r) Search Query]

The transfer warranties cannot be disclaimed with respect to checks.[1] This provision of the Uniform Commercial Code should be construed to invalidate the disclaimer of warranties with respect to checks when third persons are involved. With respect to the immediate parties to the transfer of a check, there would appear to be no reason why they cannot agree that the transferee could not assert any transfer warranty against the transferor. Thus, an indorser of a negotiable instrument assumes credit liability unless the indorser disclaims it by indorsing the instrument "without recourse"; such indorsement does not, however, disclaim applicable transfer and presentment warranties.[2]

Transfer warranties on other instruments may be disclaimed. This may be accomplished either by an agreement between the immediate parties or by including in the indorsement words like "without warranties" or a similar phrase.[3] As to nonchecks, the transferor is given a free hand to disclaim the transfer warranties not only with respect to the transferor's immediate transferees but also with respect to subsequent transferees. As between the immediate parties, it is sufficient that there was an agreement that warranty liability be disclaimed. For the disclaimer to be binding upon subsequent transferees, the disclaimer must appear on the instrument, typically as part of an indorsement.[4]

Footnotes

1 U.C.C. § 3-416(c) [1990 Rev], referring to U.C.C. § 3-416(a) [2002].

2 LifeWise Master Funding v. Telebank, 374 F.3d 917, 53 U.C.C. Rep. Serv. 2d 1020 (10th Cir. 2004). As to the disclaimer of warranties of presentment, see § 465.

3 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:8 [Rev.] (3d ed.).

4 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:8 [Rev.] (3d ed.).

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XI. Liability of Parties

E. Warranties

2. Transfer Warranties

§ 479. Notice of breach of transfer warranties

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

Treatises and Practice Aids

As to transfer warranties, generally, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

Unless notice of a claim for breach of warranty is given to the warrantor within 30 days after the claimant has reason to know of the breach and the identity of the warrantor, the liability of the warrantor is discharged to the extent of any loss caused by the delay in giving notice of the claim.[1] The Uniform Commercial Code makes no provision as to whether the notice to the warrantor must be written nor does it specify the manner in which it is to be "given."

Between the immediate parties, disclaimer may be made by agreement.[2] In the case of an indorser, disclaimer of the transferor's liability, to be effective, must appear in the indorsement with words, such as "without warranties" or some other specific reference to warranties.[3] However, in the case of a check, transfer warranties cannot be disclaimed at all.[4] In the check collection process, the banking system relies on these warranties.[5]

Practice Tip:

The requirement of knowledge of the "identity of the warrantor," in the provision for computing time in which notice must be given, should be construed to include an address at which notice may be given.[6] In the case of the indorsing warrantor, the name of

the warrantor can be determined by examining the instrument. However, this may be of little value if the claimant does not have any address or other means of communicating with the warrantor.[7]

Footnotes

1 U.C.C. § 3-416(c) [2002], referring to U.C.C. § 3-416(b) [2002].

2 U.C.C. § 3-416 [2002] Official Comment 5.

3 U.C.C. § 3-416 [2002] Official Comment 5.

4 U.C.C. § 3-416 [2002] Official Comment 5, referring to U.C.C. § 3-416(c) [2002].

5 U.C.C. § 3-416 [2002] Official Comment 5.

6 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:10 [Rev.] (3d ed.).

7 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:10 [Rev.] (3d ed.).

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XI. Liability of Parties

E. Warranties

2. Transfer Warranties

§ 480. Accrual of cause of action

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Bills and Notes 296

Treatises and Practice Aids

As to transfer warranties, generally, see Lawrence's Anderson on the Uniform Commercial Code, Article 3 [Rev] Negotiable Instruments [Westlaw®(r): Search Query]

A cause of action for breach of a transfer warranty accrues when the claimant has reason to know of the breach.[1] An action for breach of a transfer warranty must be brought within three years after the cause of action accrues.[2]

Comment:

Since the traditional term "cause of action" may have been replaced in some states by "claim for relief" or some equivalent term, the words "cause of action" have been bracketed in the Uniform Commercial Code to indicate that the words may be replaced by an appropriate substitute to conform to local practice.[3]

Footnotes

1 U.C.C. § 3-416(d) [2002].

2 Frisch, Lawrence's Anderson on the Uniform Commercial Code § 3-416:11 [Rev.] (3d ed.).

3 U.C.C. § 3-416 [2002] Official Comment 7.

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XI. Liability of Parties

F. Payment or Acceptance by Mistake

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Research References

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